

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CRIMINAL TERM PART 85

PEOPLE OF THE STATE OF NEW YORK

vs.

JABAR MOORE a/k/a JAMAL MOORE a/k/a JABAR
WALKER

AFFIRMATION IN
SUPPORT OF ORDER TO
VACATE AND DISMISS

Indictment No.
5208-1997

Shalena D. Howard, Assistant District Attorney of New York County; an attorney admitted to practice law before the Courts of the State of New York affirms under the penalty of perjury that:

1. Jabar Moore, the defendant in this case, requested that the New York County District Attorney's Office review his 1998 conviction of two counts of murder in the second degree. Mr. Moore was convicted after trial and sentenced to two consecutive terms of 25 years to life. Mr. Moore has been incarcerated on the instant matter since his conviction in 1998.
2. On or about December 9, 2019, Mr. Moore filed a post-conviction motion pursuant to Criminal Procedure Law (herein CPL) 440.10 claiming actual innocence, due process violations, *Brady* violations, and ineffective assistance of counsel.
3. Upon review of Mr. Moore's CPL 440 claims as well as further investigation conducted in this case, the People consent to the vacatur and move to dismiss the indictment pursuant to CPL 440.10(1)(h) and (1)(g).
4. The People consent to vacatur of the conviction on the grounds that there exists newly discovered evidence and that, particularly in light of this new evidence, Mr. Moore did not receive meaningful representation under New York State law. Taken together, these factors create a reasonable probability of a more favorable outcome and support vacating Mr. Moore's conviction pursuant to CPL 440.10(1)(h) and 440.10(1)(g). The People further move to dismiss the indictment in the interest of justice, and because the People can no longer prove their case beyond a reasonable doubt. This affirmation summarizes the investigation and conclusions that serve as the basis for the People's position.

5. On or about September 30, 2022, defense counsel, Vanessa Potkin of the Innocence Project, entered into a collaboration agreement with the Post Conviction Justice Unit (herein PCJU) at the New York County District Attorney's Office (herein DANY). Since that date, DANY and the Innocence Project have collaboratively reinvestigated Mr. Moore's claims.
6. DANY and the Innocence Project crafted and followed an investigative plan which included the following steps: (1) review all police and District Attorney files in connection with the prosecution of Mr. Moore; (2) locate and interview all civilian and law enforcement witnesses related to the case, including Defendant; and (3) review all post-conviction litigation.
7. This joint investigation spanned eleven (11) months and included interviewing a total of thirty (30) witnesses in connection with this case. The People's conclusions, following that investigation, are as follows.
8. **John Mobley** testified at trial as an ear witness who purportedly heard Mr. Moore confess to the murders. Mr. Mobley testified that he had knowledge of Mr. Moore obtaining a firearm, knew about the murder for hire plot, the disposal of the weapon, and heard Mr. Moore confess to committing the murders. However, on the day of Mr. Moore's sentencing in 1998, Mr. Mobley went to Mr. Moore's attorney's office seeking to recant that testimony. Mr. Moore's lawyers did not meet with Mr. Mobley at that time.
9. In 1999, Mr. Mobley wrote an affidavit memorializing his recantation under oath. In 2021, Mr. Mobley executed a second affidavit. Consistent with his previous recantations, the 2021 affidavit states that Mr. Mobley fabricated his trial testimony under pressure to implicate Mr. Moore. Specifically, Mr. Mobley states that law enforcement showed him photos of other crime scenes and implied that they would charge him with those homicides. Mr. Mobley testified that he was incarcerated in New Jersey facing a lengthy prison sentence on a felony charge at the time of his testimony and that, as a result of his testimony, he was offered, and received, a reduced prison sentence and a misdemeanor conviction. In January 2023, the People interviewed Mr. Mobley and he maintained his recantation. The People reviewed records that confirm certain aspects of Mr. Mobley's statements and found Mr. Mobley credible.
10. Mr. Mobley's recantation of his trial testimony leaves no evidence of motive and renders the case a one eyewitness case with no supporting forensic evidence linking Mr. Moore to the

crime. Mr. Mobley recanted around the time of Mr. Moore's sentencing, has consistently maintained his recantation, and has more recently amplified and deepened his recantation.

11. **Carlos Jimenez** also testified as an eyewitness at trial but did not identify anyone as the perpetrator. Mr. Jimenez testified that he was playing dominoes on the street near the shooting. Mr. Jimenez testified that he did not see the shooter's face but saw the male run from the scene. During his testimony, Mr. Jimenez was not asked whether Mr. Moore looked like the person he saw running from the scene.
12. PCJU interviewed Mr. Jimenez on February 15, 2023. Mr. Jimenez indicated that, at the time of the homicide, he knew Mr. Moore from the neighborhood. Notwithstanding that Mr. Jimenez was familiar with Mr. Moore and closer to the shooter than Vanessa Vigo, the sole identifying eyewitness, he has never identified Mr. Moore as the shooter. Indeed, Mr. Jimenez told PCJU that he did not see Mr. Moore on the block the night of the shooting. While Mr. Jimenez states that he did not see the shooter's face, his statement that he did not see Mr. Moore on the block undermines Ms. Vigo's testimony about Mr. Moore walking from Amsterdam Avenue, looking into the vehicle, crossing the street towards the corner of Broadway, and then returning to the vehicle. The defense did not adequately probe Mr. Jimenez's failure to identify Mr. Moore at trial.
13. **Vanessa Vigo** is the single eyewitness who identified Mr. Moore. Ms. Vigo testified that she witnessed the instant shooting from her second-floor apartment window across the street. Her statements evolved from her initial statement versus her grand jury and trial testimony.
14. Around the time Ms. Vigo identified Mr. Moore in the instant case, she also purported to provide an eyewitness identification of the shooter in a different homicide investigation. Despite Ms. Vigo's identification, that homicide remains unsolved.
15. Based on the reinvestigation, the People have lost confidence in Ms. Vigo's testimony.
16. Finally, with respect to ineffective assistance of counsel, defense counsel failed to adequately probe the weaknesses in the testimony of Mr. Mobley and Mr. Jimenez, as explained above, among other deficiencies that appear to have stemmed from defense counsel's lack of litigation, absence of trial, and minimal criminal law experience, having graduated from law school two years prior to the start of trial. Further evidence of the defense counsel's

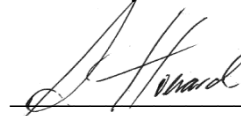
ineffectiveness is shown in the stipulation of a potential exculpatory witness. At trial, defense counsel stipulated to another witness's pretrial non-identification of Mr. Moore without interviewing that witness (despite the People's offer to make him available), or even asking to review the photo array reviewed by the missing witness. These deficiencies take on particular salience in light of the weaknesses described above in the testimony of Ms. Vigo, which was critical to Mr. Moore's conviction.

17. For the aforementioned reasons, the People consent to vacatur of the conviction and move for dismissal of the indictment. Annexed hereto is a proposed order for the Court's execution.

DATED: New York, New York
November 27, 2023

Alvin L. Bragg, Jr.
New York County District Attorney

By:



Shalena D. Howard
Assistant District Attorney
Deputy Chief, Post-Conviction Justice
Unit
Phone: [REDACTED]