

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1305

KA 09-00403

PRESENT: CENTRA, J.P., FAHEY, CARNI, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

RICHARD J. WASHINGTON, III, DEFENDANT-APPELLANT.

FRANK J. NEBUSH, JR., PUBLIC DEFENDER, UTICA (ROBERT R. REITTINGER OF COUNSEL), FOR DEFENDANT-APPELLANT.

SCOTT D. MCNAMARA, DISTRICT ATTORNEY, UTICA (STEVEN G. COX OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Oneida County Court (Barry M. Donalty, J.), rendered December 13, 2006. The appeal was held by this Court by order entered March 25, 2011, decision was reserved and the matter was remitted to Oneida County Court for further proceedings (82 AD3d 1675). The proceedings were held and completed.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: We previously held this case, reserved decision, and remitted the matter to County Court "to conduct a hearing on defendant's motion" to dismiss the indictment on the ground that the integrity of the grand jury proceedings was impaired pursuant to CPL 210.20 (1) (c) because a specified grand juror was incapable of performing his duties based on bias or prejudice (*People v Washington*, 82 AD3d 1675, 1677; see CPL 190.20 [2] [b]). Upon remittal, the court conducted the hearing on defendant's motion. Defendant concedes that the court has now complied with CPL 210.45 in connection with his motion, and we conclude from the hearing transcript that defendant failed to prove "by a preponderance of the evidence every fact essential to support the motion" (CPL 210.45 [7]). Thus, we affirm the judgment.

Entered: December 23, 2011

Frances E. Cafarell
Clerk of the Court