

SUPREME COURT OF THE STATE OF NEW YORK
ERIE COUNTY: CRIMINAL TERM

PEOPLE OF THE STATE OF NEW YORK

- AGAINST -

JAMES PUGH,

DEFENDANT.

**MEMORANDUM
OF LAW**

Ind. No. 93-0341

Defendant James Pugh submits this memorandum of law in support of his motion pursuant to C.P.L. § 210.40(1) and *People v. Clayton*, 41 A.D.2d 204 (2d Dep't 1973) to dismiss the indictment pending against him. This is the rare case where there are compelling factors requiring the Court, in its discretion, to dismiss with prejudice the remaining two counts of the indictment against Mr. Pugh in furtherance of justice. *Id.* All the *Clayton* factors militate in favor of dismissal, but the primary reason that the case should not be brought to trial is that the People are not in possession of any admissible evidence linking Mr. Pugh to the murder of Deborah Meindl on February 17, 1993 and the DNA evidence excludes him as a suspect. On the existing evidence, there is no way the People could obtain a grand jury indictment, let alone a trial verdict beyond a reasonable doubt.

Moreover, Mr. Pugh has already served more than 26 years in prison and has been a productive member of society for the past six-and-a-half years as his CPL § 440.10 motion has worked its way through the courts. He has been fully compliant with parole. He presents no risk to public safety. The underlying conviction was secured as a result of exceptionally serious police misconduct. Accordingly, dismissing the case now would be in furtherance of justice under *Clayton*.

FACTS

The facts relied on in this memorandum of law are set forth in the attached Attorney Affirmation.

LEGAL FRAMEWORK

Under CPL § 210.40(1), a court may dismiss any count of an indictment “in furtherance of justice” when doing so “is required as a matter of judicial discretion by the existence of some compelling factor, consideration or circumstance clearly demonstrating that conviction or prosecution of the defendant upon such indictment or count would constitute or result in injustice.” *See also People v. Clayton*, 41 A.D.2d 204 (2d Dep’t 1973).

In determining whether such a compelling factor, consideration, or circumstance exists, the Court must consider, individually and collectively, ten factors:

- (a) the seriousness and circumstances of the offense;
- (b) the extent of harm caused by the offense;
- (c) the evidence of guilt, whether admissible or inadmissible at trial;
- (d) the history, character and condition of the defendant;
- (e) any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest and prosecution of the defendant;
- (f) the purpose and effect of imposing upon the defendant a sentence authorized for the offense;
- (g) the impact of a dismissal upon the confidence of the public in the criminal justice system;
- (h) the impact of a dismissal on the safety or welfare of the community;
- (i) where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion; and

- (j) any other relevant fact indicating that a judgment of conviction would serve no useful purpose.

C.P.L. § 210.40(1). The court may consider additional relevant factors, beyond the ten listed, but must consider the enumerated factors in making its determination. *Id.* The court may dismiss the indictment based on its own, the defendant's, or the prosecution's motion. *See* C.P.L. § 210.40(3). When any party moves to dismiss under § 210.40, a hearing is required and the parties may present "evidence and arguments . . . pertinent to the interests of justice." *People v. Clayton*, 41 A.D.2d at 207-08. To determine whether to grant the motion, the Court should engage in a "sensitive balanc[ing]" of the interests of the individual and the state. *Id.* at 208.

ARGUMENT

Each of the *Clayton* factors supports dismissal of the case against Mr. Pugh without forcing him to endure another trial all but certain to end in acquittal. The most important, of course, is subsection (c): there is no evidence linking Mr. Pugh to the crime and the DNA evidence from the crime scene, including DNA found on the murder weapons, excludes Mr. Pugh as a contributor. *See generally* Attorney Affirmation. The only evidence against Mr. Pugh has always been perjurious nonsense by desperate witnesses manipulated by Tonawanda Det. David Bentley. Every witness who previously testified against Mr. Pugh has either fully recanted, citing police pressure for their original testimony, or, in the case of Nancy Hummingbird, was caught on tape saying she knew that Mr. Pugh did not commit the murder. On November 5, 2025, the People received even more evidence of Mr. Pugh's innocence when witness Dennis Wagner, afflicted with throat cancer, told District Attorney's investigator

Salvatore Valvo, that a detective “told him what to say” when he testified against Mr. Pugh in the 1994 trial. Despite being weeks from trial, the People failed to alert the Court about Wagner’s situation, and only advised the defense this past week at the same time as they filed their motion seeking to reinstate the original conviction against Mr. Pugh.

Beyond the accumulating evidence of Mr. Pugh’s actual innocence, the other *Clayton* factors all support this application. Mr. Pugh served twenty-six-and-half years in New York State prisons for a crime he did not commit. He has waited more than thirty-two years for a fair trial. As to the specific Clayton factors, factor (d) strongly favors dismissal given Mr. Pugh’s exemplary institutional record, his decades of productive conduct, and the absence of any history suggesting he poses a risk to the community. Factor (e) weighs heavily in his favor, as exceptionally serious police misconduct—now corroborated by multiple recantations, contemporaneous recordings, and acknowledgement by the Appellate Division—compromised the integrity of the original prosecution and confidence in law enforcement. Under factors (f) and (h), no valid penal purpose is served by imposing or reinstating a sentence where the defendant is innocent, especially given that he already fully served his prior sentence of incarceration and poses no threat to public safety. Finally, under factor (j), every relevant circumstance—including the extraordinary passage of time and the fact that Mr. Pugh has been severely punished already—demonstrates that a conviction would serve no useful purpose.

Finally, the Court is required to consider is, “the impact of a dismissal upon the confidence of the public in the criminal justice system.” C.P.L. § 210.40(1)(g). In this extraordinary case, a dismissal would restore, not undermine, confidence in the criminal justice system because, as the extensive media coverage has reflected, each and every piece of

evidence against Mr. Pugh has collapsed, and the Erie County District Attorney's failure to acknowledge their error is inexplicable. Accordingly, the statutory balancing mandated by C.P.L. § 210.40(1) compels dismissal in the interest of justice.

The murder of Debroah Meindl was, and is, a tragedy that destroyed a family. But the continued prosecution of an innocent man will not bring back Ms. Meindl. It has only served to compound the pain inflicted by her death.

CONCLUSION

Because Mr. Pugh is innocent, has already been punished as though he were guilty, and his wrongful conviction was the direct result of egregious police misconduct, the remaining counts of the indictment against him should be dismissed in furtherance of justice under C.P.L. § 210.40(1) and *People v. Clayton*, 41 A.D.2d 204 (2d Dept. 1973).

Dated: New York, New York
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