Touro Law Review

Volume 11 | Number 3 Article 41

1995

Grand Jury

GRAND JURY

N.Y. CONST. art. I, § VI:

No person shall be held to answer for a capital or otherwise infamous crime . . . unless on indictment of a grand jury, except that a person held for the action of a grand jury upon a charge for such an offense, other than one punishable by death or life imprisonment, with the consent of the district attorney, may waive indictment by grand jury and consent to be prosecuted on an information filed by the district attorney; such waiver shall be evidenced by written instrument signed by the defendant in open court in the presence of his counsel.

SUPREME COURT, APPELLATE DIVISION

FIRST DEPARTMENT

People v. Jones[1]
(decided November 15, 1994)

The defendant claimed that her second degree murder conviction violated her right under the New York State Constitution, article I, section 6,[2] which guards against conviction of a capital or "infamous" crime without a valid indictment by a grand jury.[3] The Appellate Division, First

1. 206 A.D.2d 82, 618 N.Y.S.2d 319 (1st Dep't 1994).

2. N.Y. CONST. art. I, § 6. Section 6 provides in pertinent part: "No person shall be held to answer for a capital or otherwise infamous crime . . . unless on indictment of a grand jury. . . ." *Id.*

3. *Jones*, 206 A.D.2d at 83, 618 N.Y.S.2d at 320. The court noted that the right to a grand jury indictment stems solely from the New York State Constitution, as the similar provision set forth in the Fifth Amendment of the United States Constitution is not applicable to the states. *Jones*, 206 A.D.2d at 85 n.1, 618 N.Y.S.2d at 322 n.1. *See* Peters v. Kiff, 407 U.S. 493, 496

Department, held that where a second grand jury renders a vote of "no true bill" to the People's re-presentment of criminal charges embodied in an earlier indictment, the second grand jury vote constitutes a "legal impediment."[4] Thus, the court rejected the People's argument that the second grand jury proceeding should be declared null and void in favor of the first indictment and reversed the defendant's second degree murder conviction.[5]

Defendant was indicted by a grand jury on December 5, 1990, for felony murder and attempted robbery in both the first and second degrees for the shooting of a man during an argument over money.[6] Ten months after the first indictment proceeding, the People re-presented the case to a new grand jury in order to add an additional count of first degree burglary.[7] When the People re-presented the case to the second grand jury, the People included, in addition to the new first degree burglary count, all of the counts that were in the first indictment.[8] Following the second grand jury proceeding, the grand jury voted "no true bill" to all of the counts in the indictment, including the counts where the first grand jury moved to indict the defendant.[9] The trial court denied the defendant's motion to dismiss following the decision of the second grand jury and the defendant was subsequently convicted, pursuant to the first indictment, of second degree murder by a jury trial and sentenced to a prison term of fifteen years to life.[10]

In support of its holding, the court expressly dictated that it had fundamental authority to dismiss an indictment against a

---

(1972) (noting that the "Fifth Amendment right to a Grand Jury does not apply in a state prosecution").

4. *Jones*, 206 A.D.2d at 87, 618 N.Y.S.2d at 323.

5. *Id.* at 86-87, 618 N.Y.S.2d at 322-23. A vote of "no true bill" renders a finding by the grand jury that in their opinion there was insufficient evidence to warrant a formal charge against the defendant. BLACK'S LAW DICTIONARY 1047 (6th ed. 1990).

6. *Jones*, 206 A.D.2d at 84, 618 N.Y.S.2d at 321.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

defendant.[11] In coming to this conclusion, the court relied on the New York Court of Appeals decision in *Holtzman v. Goldman*,[12] where the court concluded that "[t]rial courts are vested with statutory power to dismiss indictments, of course, but the power is not unlimited."[13] This statutory power referred to by the court of appeals is set forth in New York Criminal Procedure Law [hereinafter CPL] section 210.20(1).[14] The court in *Goldman* stated that pretrial dismissals can only be sought in accordance with CPL section 210.20.[15] Similarly, in reaching their decision, the *Jones* court relied upon CPL section 210.20(1)(h) and stated that no other provision within CPL section 210.20(1) was

---

11. *Id.*

12. 71 N.Y.2d 564, 523 N.E.2d 297, 528 N.Y.S.2d 21 (1988) (holding that the trial judge exceeded his powers when he entered a nonappealable order of dismissal on the merits of a case even though no evidence had been introduced and the merits of the case had not been heard).

13. *Id.* at 570, 523 N.E.2d at 301, 528 N.Y.S.2d at 25.

14. N.Y. CRIM. PROC. LAW § 210.20(1) (McKinney 1993). The statute states in pertinent part:

> After arraignment upon an indictment, the superior court may, upon motion of the defendant, dismiss such indictment or any count thereof upon the ground that:
>
> (a) Such indictment or count is defective, within the meaning of section 210.25; or
>
> (b) The evidence before the grand jury was not legally sufficient to establish the offense charged or any lesser included offense; or
>
> (c) The grand jury proceeding was defective, within the meaning of section 210.35; or
>
> (d) The defendant has immunity with respect to the offense charged, pursuant to section 50.20 or 190.40; or
>
> (e) The prosecution is barred by reason of a previous prosecution, pursuant to section 40.20; or
>
> (f) The prosecution is untimely, pursuant to section 30.10; or
>
> (g) The defendant has been denied the right to a speedy trial; or
>
> (h) There exists some other jurisdictional or legal impediment to conviction of the defendant for the offense charged; or
>
> (I) Dismissal is required in the interest of justice, pursuant to section 210.40.

Id.

15. *Goldman*, 71 N.Y.2d at 571-72, 523 N.E.2d at 302, 528 N.Y.S.2d at 26.

applicable.[16] Thus, the court in *Jones* explained that a defendant subject to conviction following a vote of "no true bill" to all counts in an indictment constituted a true legal impediment which was binding on the case against the defendant and overrode the original indictment.[17]

The majority's holding was not the first of its kind based on the factual circumstances presented to the court. In *People v. Franco*,[18] the Appellate Division, Second Department, faced with a situation nearly identical to the facts in *Jones*, held that CPL section 210.20(1)(h) was applicable to nullify a first indictment against an individual where a second grand jury votes "no true bill" to the same charges.[19] The court reasoned that "the power of the [g]rand [j]ury to decisively abort criminal proceedings against an individual may not be infringed upon or in any way curtailed."[20]

The *Jones* court continued with an evaluation of the purpose of a grand jury proceeding, focusing on the reasoning deduced in the New York Court of Appeals decision *People v. Iannone*.[21] In

16. *Jones*, 206 A.D.2d 84-85, 618 N.Y.S.2d at 321. *See* People v. Goodman, 31 N.Y.2d 262, 269 n.1, 290 N.E.2d 139, 144 n.1, 338 N.Y.S.2d 97, 104 n.1 (1972) (stating that Criminal Procedure Law § 210.20(1)(h) is a "dragnet provision authorizing a motion to dismiss an indictment on the basis of any 'other jurisdictional or legal impediment to conviction' not mentioned in the other paragraphs") (citation omitted).

17. *Jones*, 206 A.D.2d at 85, 618 N.Y.S.2d at 321-22.

18. 196 A.D.2d 357, 612 N.Y.S.2d 591 (2d Dep't 1994) (holding that where charges are resubmitted to a second grand jury, the subsequent rejection of those charges nullifies an indictment by a first grand jury and constitutes a legal impediment).

19. *Id.*

20. *Id.*

21. 45 N.Y.2d 589, 384 N.E.2d 656, 412 N.Y.S.2d 110 (1978) (holding that a timely objection must be made where there is any objection to the adequacy of the factual allegations in an indictment which properly charges a defendant with the commission of a crime). *See* People v. Lancaster, 69 N.Y.2d 20, 503 N.E.2d 990, 511 N.Y.S.2d 559 (1986) (holding that the prosecution is not obligated to charge a grand jury with respect to a possible defense based on mental disease or defect and there is no duty to present evidence of a defendant's psychiatric history in their possession that could support such a defense); People v. Ford, 62 N.Y.2d 275, 465 N.E.2d 322, 476 N.Y.S.2d 783 (1984) (holding that unless a defendant makes a timely

Iannone, the court of appeals stated that a grand jury indictment is "intended to prevent the people of this State from potentially oppressive excesses by the agents of the government in the exercise of the prosecutorial authority vested in the State."[22] In addition, the *Iannone* court stated that, in order to provide citizens with protection from public accusation of criminal wrongdoing and the difficult task of defending oneself from such a charge, the state is required to persuade a grand jury "that there exists sufficient evidence and legal reason to believe the accused guilty."[23] Furthermore, the *Jones* court cited to CPL section 190.75(3),[24] which requires that where a charge is dismissed, it may not be resubmitted to a grand jury unless authorized by the court.[25] The court relied on the reasoning established in *People v. Cade*.[26] In *Cade*, the court of appeals explained that, at common law, the power of the prosecutor to resubmit charges to the same or new grand jury was unlimited, and that in order to curtail abuse of this power by prosecutors, legislative action was necessary.[27] Section 190.75(3) of the CPL

---

objection, any error by a trial court when considering or submitting to a jury a lesser crime that arises out of the same criminal act and is not included in the indictment is waived).

22. *Iannone*, 45 N.Y.2d at 594, 384 N.E.2d at 660, 412 N.Y.S.2d at 113.

23. *Id.*

24. N.Y. CRIM. PROC. LAW § 190.75(3) (McKinney 1993). The statute provides in pertinent part:

> When a charge has been so dismissed, it may not again be submitted to a grand jury unless the court in its discretion authorizes or directs the people to resubmit such charge to the same or another grand jury. If in such case the charge is again dismissed, it may not again be submitted to a grand jury.

Id.

25. N.Y. CRIM. PROC. LAW § 190.75(3).

26. 74 N.Y.2d 410, 415, 547 N.E.2d 339, 341, 548 N.Y.S.2d 137, 139 (1989) (holding that where a grand jury votes favorably on charges preferred against a defendant, the prosecutor is permitted to resubmit the matter to the same grand jury without having to reintroduce the same evidence or the prosecutor may resubmit to a new grand jury without the consent of the court and obtain a superseding indictment).

27. *Id.* at 414, 547 N.E.2d at 340, 548 N.Y.S.2d at 138.

was established to approach this concern.[28] Thus, the *Jones* court acknowledged that their authority over granting resubmissions is warranted only upon proper cause.[29]

The court further focused on the decision of *People v. Dykes*,[30] which set forth factors a court may consider when determining whether to grant a resubmission of charges to a second grand jury. In *Dykes*, the court stated that, where a grand jury finds that evidence presented does not warrant an indictment, there should not be a resubmission "unless it appears . . . that new evidence has been discovered since the former submission; that the grand jury failed to give the case a complete and impartial investigation; or that there is a basis for believing that the grand jury otherwise acted in an irregular manner."[31] After considering these factors, the authority by a court to grant a resubmission to a grand jury should be exercised only in limited circumstances in a discriminate manner.[32] The court, in *Jones*, acknowledged that the People failed to delineate any grounds or basis pursuant to CPL section 190.75(3) to warrant rejection of the second grand jury vote.[33]

---

28. *Id.* Furthermore, in People v. Martin, 71 A.D.2d 928, 419 N.Y.S.2d 724 (2d Dep't 1979), the Appellate Division, Second Department, stated that the purpose of CPL § 190.75(3) is to "protect a potential defendant by preventing the District Attorney from resubmitting a matter more than once and by requiring him to obtain permission from the court to resubmit." *Id.* at 929, 419 N.Y.S.2d at 725-26. Moreover, the court reasoned that since "the prosecutor is still required to make an application to the court shows that his dissatisfaction with the first [g]rand [j]ury's action is not in itself sufficient reason to permit resubmission." *Id.* at 929, 419 N.Y.S.2d at 726.

29. *Jones*, 206 A.D.2d at 85-86, 618 N.Y.S.2d at 322.

30. 86 A.D.2d 191, 449 N.Y.S.2d 284 (2d Dep't 1982). The defendant was charged with first degree assault and fourth degree criminal possession of a weapon. *Id.* at 193, 449 N.Y.S.2d at 286. Following a grand jury proceeding, the grand jury refused to indict. *Id.* The trial court then granted the prosecutor's request of resubmission based on his claim that the first grand jury vote was against the weight of the evidence. *Id.* The trial court denied the defendant's writ of prohibition and the defendant was later indicted by the second grand jury. *Id.*

31. *Id.* at 195, 449 N.Y.S.2d at 288.

32. *Id.* at 195, 449 N.Y.S.2d at 287.

33. *Jones*, 206 A.D.2d at 86, 618 N.Y.S.2d at 322.

The *Jones* court utilized the above reasoning and stated that to allow a prosecutor to continue with the first indictment after all the charges were dropped in a subsequent proceeding is "tantamount to allowing the resubmission of charges without any legal basis . . . [which] would be in direct contravention of the intent of CPL section 190.75(3) and compromise the authority and integrity of the second [g]rand [j]ury."[34] The court reasoned in the case at hand that to permit the trial court to proceed based on the first indictment would undermine the function of the grand jury to evaluate evidence and determine whether to indict an individual charged with a crime.[35]

The court in *Jones* went on to reject the People's contention that CPL section 200.80[36] provided a basis for rejecting the second grand jury's vote.[37] The court stated that CPL section 200.80 is applicable in situations only where both grand juries considering the charges vote to indict.[38] The court supposed that the statute was applicable to the defendant's situation where the second indictment should have superseded the first indictment.[39] The *Jones* court ultimately concluded that the second grand jury vote constituted a legal impediment to the

---

34. *Id.*

35. *Id.* at 86-87, 618 N.Y.S.2d at 323.

36. N.Y. CRIM. PROC. LAW § 200.80 (McKinney 1993). The statute provides:

> If at any time before entry of a plea of guilty to an indictment or commencement of a trial thereof another indictment is filed in the same court charging the defendant with an offense charged in the first indictment, the first indictment is, with respect to such offense, superseded by the second and, upon the defendant's arraignment upon the second indictment, the count of the first indictment charging such offense must be dismissed by the court. The first indictment is not, however, superseded with respect to any count contained therein which charges an offense not charged in the second indictment. Nothing herein precludes the filing of a superseding indictment when the first accusatory instrument is a superior court information.

Id.

37. *Jones*, 206 A.D.2d at 87, 618 N.Y.S.2d at 323.

38. *Id.*

39. *Id.*

defendant's prosecution; thus, the court reversed the conviction of the defendant.[40]

However, the majority opinion by the court did not stand without dissent. Justice Sullivan, dissenting, disagreed as to the application of the legislative intent set forth in *Cade*.[41] The dissent argued that the legislative purpose of CPL sections 190.75(3) and 200.80 was intended to protect the defendant in situations where there is a vote of "no true bill" and a second indictment is filed on the same charges.[42] In a situation where the same charges are being re-presented to a second grand jury, the dissent indicated that the potential for abuse by the prosecution, as maintained by the majority, is minimalized.[43] The dissent argued that there was no basis, in the instant case, for prosecutorial abuse since the only purpose for the second grand jury hearing was to add an additional count of burglary.[44] According to the dissent, CPL section 200.80 is a procedural device that fails to indicate that the Legislature intended to provide a second grand jury with the power to supersede a vote by a prior grand jury and to dismiss the charges already voted on by the first grand jury.[45]

The dissent further attacked the majority's holding that was based upon CPL section 210.20(1)(h). According to the dissent, the majority sought support in CPL section 210.20(1)(h) because they could not base their dismissal on any other statutory grounds.[46] The dissent focused on CPL section 190.75(1)[47] to rebut the finding made by the majority and the Appellate

40. *Id.*

41. *Id.* at 91, 618 N.Y.S.2d at 325 (Sullivan, J., dissenting).

42. *Id.* at 90-91, 618 N.Y.S.2d at 325 (Sullivan, J., dissenting).

43. *Id.* (Sullivan, J., dissenting).

44. *Id.* (Sullivan, J., dissenting).

45. *Id.* at 92, 618 N.Y.S.2d at 326 (Sullivan, J., dissenting).

46. *Id.* (Sullivan, J., dissenting).

47. N.Y. CRIM. PROC. LAW § 190.75(1) (McKinney 1993). The statute provides in pertinent part: "If upon a charge that a designated person committed a crime, either (a) the evidence before the grand jury is not legally sufficient to establish that such a person committed such a crime or any other offense . . . it must dismiss the charge." *Id.*

Division, Second Department, in *Franco*.[48] Justice Sullivan argued that CPL section 190.75(1) requires that, in order for charges to be dismissed, a grand jury must find that the evidence presented by the prosecution is insufficient to warrant an indictment.[49] The dissent argued that, since the statute fails to provide for dismissal of a pre-existing indictment, the trial court properly denied the defendant's motion to dismiss.[50]

The Appellate, Division, First Department did not consider whether the defendant's claims were viable under the Federal Constitution because the United States Supreme Court has ruled that the standards set forth in the Fifth Amendment,[51] which require that a person not be held for a capital or infamous crime unless the charges are presented and an indictment results from a grand jury proceeding, are not applicable to state courts.[52] In *Alexander v. Louisiana*,[53] the United States Supreme Court stated that while it is true that the Due Process Clause ensures that petitioner will receive a fair trial, "it does not require the States to [follow] the Fifth Amendment's provision for presentment or indictment by a [g]rand [j]ury . . . the Court has never held that federal concepts of a '[g]rand [j]ury,' binding on the federal courts under the Fifth Amendment, are obligatory [on] the States."[54]

Therefore, although both the Federal and New York Constitutions provide grand jury provisions when an individual is charged with a crime, New York courts do not fall into the confines of federal constitutional law since the provision is inapplicable to the states.

---

48. *Jones*, 206 A.D.2d at 92-93, 618 N.Y.S.2d at 326-27 (Sullivan, J., dissenting).

49. *Id.* at 93, 618 N.Y.S.2d at 326-27 (Sullivan, J., dissenting).

50. *Id.* (Sullivan, J., dissenting).

51. U.S. CONST. amend. V. The Fifth Amendment states in pertinent part: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . . ." *Id.*

52. People v. Iannone, 45 N.Y.2d 589, 593 n.3, 384 N.E.2d 656, 659 n.3, 412 N.Y.S.2d 110, 113 n.3 (1978).

53. 405 U.S. 625 (1972).

54. *Id.* at 633.