

People v Bedell

2006 NY Slip Op 30150(U)

April 21, 2006

County Court, Suffolk County

Docket Number: 0001393/1996

Judge: Andrew A. Crecca

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MEMORANDUM

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

THE PEOPLE OF THE STATE OF NEW YORK	:	
	:	
-vs-	:	By: Hon. Andrew A. Crecca, J.C.C.
	:	
TIMOTHY BEDELL,	:	Case No. 1393-96
	:	
Defendant.	:	

HON. KATHLEEN M. RICE
Nassau County District Attorney
Special Prosecutor, by:
JUDITH R. STERNBERG
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Mineola, New York 111501

TIMOTHY BEDELL
Defendant Pro-Se #97A 5395
Greenhaven Correctional Facility
P.O. Box 4000
Stormville, New York 12582

The above named defendant has moved this court for an order, pursuant to CPL Article 440, vacating his judgment of conviction and/or setting aside his sentence with reference to the above entitled matter. In the alternative, the defendant requests that a hearing be held to resolve the issues raised by his motion.

The District Attorney has filed an affidavit with the court dated March 30, 2006 opposing such relief.

For the reasons that follow, defendant's application for an order vacating his judgment of conviction and/or setting aside his sentence or, in the alternative, for a hearing to determine same is, in all respects DENIED. [*People v. Friedgood*, 58 NY2d 467; *People v. Donovan*, 107 AD2d 433].

Initially, the court will address defendant's application to set aside his sentence pursuant to CPL § 440.20. In this regard, it is essentially the defendant's contention that the consecutive sentences imposed upon him for crimes committed by him against two separate victims were unauthorized, illegally imposed or otherwise invalid as a matter of law.

The record before this court revealed that subsequent to a jury trial the defendant was convicted, *inter alia*, of the attempted murder of one victim and for assault in the First Degree of another victim as a result of a brutal knife wielding incident in the home of one of the victims. The jury determined the defendant's actions were intentional and discounted any claim of self defense as raised by the defendant. As a consequence of defendant's conduct, both victims received extremely severe and life threatening injuries.

At the time of sentencing, the trial court considered all the relevant circumstances and imposed consecutive sentences on the defendant for the separate acts of the defendant which caused injuries to each victim.

It is well settled that in this jurisdiction the test to be applied for determining whether consecutive sentences can legally be imposed is simply whether separate and distinct acts have been committed by the defendant with the requisite criminal intent. [See, *People v. Colon*, 275 AD2d 797; *People v. Black*, 249 AD2d 318; *People v. Ramos*, 205 AD2d 404].

Upon review of the court record maintained in connection with this matter, this court can state with complete confidence that the acts of the defendant which formed the basis of the charges in the indictment, as they relate to each victim, were not committed through a single act but were separate and distinct acts within the meaning of statute and other legal precedent, and as a result, the consecutive sentences imposed in this case were not proscribed by PL§ 70.25(2) and were clearly authorized, legal and valid as a matter of law.

In this regard, contrary to the contentions of the defendant, and despite the fact that the attack on the two victims occurred within a confined area in the course of one extended transaction, the injuries suffered by each victim were nevertheless caused by the defendant's affirmative act of first stabbing one victim and thereafter wielding his knife in the direction of the other. Thus, in the opinion of the court, each offense was rendered separable and distinct from the transaction as a whole, thereby lawfully permitting the imposition of consecutive sentences. [See, *People v. Colon*, *supra*; *People v. Black*, *supra*; *People v. Ramos*, *supra*].

In addition, the court considered the defendant's constitutional claim that the procedure by which the sentencing court determined that he was eligible for consecutive sentences violated the principles of *Aprendi v. New Jersey*, 530 U.S. 466. Upon due consideration, this court has determined that the defendant's contentions in this regard are entirely without merit. This court's review of the sentencing transcript revealed not only that the sentencing court properly considered relevant and appropriate factors prior to imposition of sentence, but also did not engage in any fact finding. The court's decision to impose consecutive sentences was clearly a legal determination based on facts already found by the jury. [*People v. Lloyd*, 23 AD3d 296; *People v. Holland*, 13 AD3d 1101; *People v. Smith*, 2006 NY App. Div. LEXIS 2483, 810 NYS 2d 193].

Therefore, the defendant's constitutional attack on the imposition of consecutive sentences under PL § 70.25 is without merit.

Also without merit is the defendant's application to vacate the judgment of conviction and set aside his sentence in the interest of justice. This court simply has no authority to do so either by statute or other operation of law. Further, inasmuch as the defendant has already attacked the severity of his sentence on direct appeal and has had such issue determined on the merits by the Appellate Division, Second Department [*People v. Bedell*, 272 AD2d 622] he is not entitled to *coram nobis* relief under CPL Article 440 at this time [See, CPL § 440.10(2)(a); § 440.30(2)].

In addition to the arguments advanced above, the defendant moves to vacate his judgment of conviction on the grounds of the prosecutor's failure to timely disclose alleged Brady material.

It is essentially the defendant's contention that the People withheld from disclosure the substance of an alleged interview taken on April 23, 1996 between the estranged wife of the defendant, Laurie Bedell, and an unknown detective with the Southhampton Police Department. As set forth in an affidavit that accompanied the motion, Ms. Bedell stated that said interview took place wherein she told an unnamed detective with the Southhampton Police Department, in substance, that she had never known the defendant to be violent in any way. She also admits to not being a witness to the incident and to not knowing anything of the actual circumstances. In addition, during this alleged interview, she suggested that the detective should actually be investigating one of the victims. No notes of this alleged interview have ever been produced, and the People have indicated that they have been unable to locate such material in any of their records. Assuming *arguendo*, the existence of said interview, it is the determination of this court that such fact notwithstanding, the substance of the alleged interview, as set forth in Ms. Bedell's affidavit, does not in any way consist of Brady material, as such term has been defined by the courts.

Simply put, *Brady* material is defined as information within the prosecutor's possession that is both favorable and material to the defense. [*Brady v. Maryland*, 373 US 83; *People v. Delvecchio*, 187 AD2d 726]. To be deemed *Brady* material, the material must be exculpatory and within the possession, custody, or control of the People [*People v. Carnett*, 19 AD3d 703].

Applying these principles to the matter at hand, not only is there no proof put forth that the People were aware of, and possessed the material in question, but also the material in question is clearly not exculpatory or favorable to the defendant. The content of the alleged interview was, in the opinion of this court, completely unrelated to the incident and, in any event, not exculpatory in any way. Ms. Bedell was neither a witness to the incident nor possessed material information relevant to it. Her opinion as to the non-violent nature of the defendant in general, and her speculations with respect to one of the victims, is simply not exculpatory material as such term has been defined by the courts and does not fall within the rule enunciated in Brady. [See, *People v. Carnett*, *supra*; *People v. Faeth*, 298 AD2d 987]. Moreover, such testimony would not, in any event, be admissible at trial.

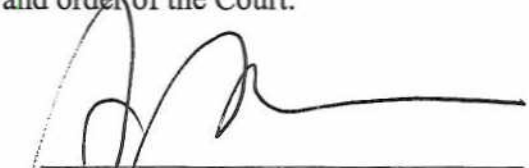
Accordingly, it is the determination of the court that there was no Brady violation on the part of the People and, as a result, defendant's application to vacate his judgment of conviction on such ground, pursuant to CPL § 440.10, is in all respects DENIED.

Therefore, based upon the foregoing, defendant's motion for an order either setting aside his sentence and/or vacating his judgment of conviction pursuant to CPL Article 440 is DENIED in all respects.

The above memorandum constitutes the decision and order of the Court.

SO ORDERED:

Dated: April 21 , 2006



HON. ANDREW A. CRECCA
County Court Judge