

**People v Parisi**

2006 NY Slip Op 30158(U)

March 24, 2006

Suffolk County Ct

Docket Number: 0002598/2005

Judge: Barbara Kahn

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COUNTY COURT, SUFFOLK COUNTY  
STATE OF NEW YORK

Present: HON. BARBARA KAHN, J.C.C.

-----X  
THE PEOPLE OF THE STATE OF NEW YORK

Indictment No. 02598/2005

v.

DAVID PARISI

Defendant.

Motion Date: March 21, 2006

-----X  
HONORABLE THOMAS J. SPOTA  
District Attorney of Suffolk County  
Elena L. Tomaro, Esq., *of counsel*  
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Riverhead, New York 11901

ARTHUR V. GRASECK, JR., ESQ.  
Attorney for Defendant  
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On January 13, 2006 the above named defendant pled guilty before this Court to one count of Attempted Grand Larceny in the Third Degree in violation of Penal Law §110-155.35 in full satisfaction of the indictment charging him with Grand Larceny in the Second Degree in violation of Penal Law §155.40. The defendant bargained for sentence which he was to receive in exchange for that plea of guilty was five years probation. Additionally, as part of the disposition of the case, the defendant was to pay restitution in the approximate amount of \$55,000.00, partly through the Department of Probation and partly through a Restitution Judgment Order.

Defendant now moves, pursuant to Criminal Procedure Law §220.60[3], to withdraw that plea of guilty. Defendant argues, among other things, that a sentence to the supervision of the Department of Probation will divert his energy from drug abuse programs which he attends presently. The defendant goes on to claim that he committed the crime because of an "emotional disturbance which was related to a chemical imbalance." The People have submitted opposition. The motion is determined as follows.

Initially, the determination of whether to allow a defendant to withdraw a plea of guilty rests within the sound discretion of the trial court (*People v. Lisbon*, 187 AD2d 457 [1992]). Generally, a guilty plea may not be withdrawn absent some evidence or claim of innocence, fraud or mistake in its inducement (*People v. Lane*, 1 AD3d 801 [2003]).

Here, the stenographic minutes of defendant's guilty plea indicate that the Court apprised the defendant of the relinquishment of his constitutional rights and the effect thereof. Further, the Court questioned the defendant as to his mental status at the time of the plea. Indeed, the following colloquy took place,

“THE COURT: As you stand before me this morning, are you under the influence of any drugs, medication, alcohol or other substance that would interfere with your ability to understand the proceedings here today?  
DEFENDANT: No.”

With respect to defendant’s claim that he was suffering from an emotional imbalance when he committed the crime for which he pled guilty, the defendant affirmatively waived his right to present possible defenses at a trial in this matter. On the record the following exchange occurred,

“THE COURT: Do you understand further, that by pleading guilty and giving up your right to a trial by jury, you give up any defense you may have to these charges?  
DEFENDANT: Yes.  
THE COURT: Has your attorney explained this to you, as well as any defenses you might have to the case?  
DEFENDANT: Yes, he has.”

As evidenced by the stenographic minutes of the defendant’s plea proceeding, it is more than evident that the defendant entered his plea of guilty knowingly and voluntarily in the presence of competent counsel after this Court had fully apprised the defendant of the consequences of his plea (*see generally People v. Kagonyera*, 304 AD2d 984 [2003]). It is also clear that the defendant fully admitted to each and every one of the elements of the crime for which he pled guilty (*see Plea Minutes, Defendant’s Exhibit “A”, pp. 14-15*).

It should be noted that as part of the defendant’s proposed sentence to the supervision of the Department of Probation, the Court is prepared to include alcohol and narcotic conditions so that the defendant will address the substance abuse problems he purports to have.

Based on the sum of the foregoing the defendant’s motion to withdraw his plea, pursuant to Criminal Procedure Law §220.60[3], is denied and sentencing on this matter is set for March 31, 2006.

The foregoing constitutes the decision and order of this Court.

Dated: March 27, 2006

  
BARBARA KAHN, J.C.C.

COUNTY COURT, SUFFOLK COUNTY  
STATE OF NEW YORK

Present: HON. BARBARA KAHN, J.C.C.

-----X  
THE PEOPLE OF THE STATE OF NEW YORK

Indictment No. 02447/2005

v.

DELROY BURKE

Motion Date: March 17, 2006

Defendant.

-----X

HONORABLE THOMAS J. SPOTA  
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Patricia Brosco, Esq., *of counsel*  
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CHRISTOPHER J. CASSAR, ESQ.  
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On November 17, 2005 the above named defendant pled guilty before this Court to one count of Operating A Motor Vehicle While Under the Influence of Drugs in violation of Vehicle and Traffic Law §1192.4. The bargained for sentence which the defendant was to receive in exchange for that plea of guilty was five years probation to be accompanied by ninety days incarceration. Additionally, as part of the plea agreement, two counts in the indictment charging traffic infractions were dismissed and the defendant agreed to waive his right to appeal.

Defendant now moves, pursuant to Criminal Procedure Law §220.60[3], to withdraw that plea of guilty. Defendant argues, based on protestations of innocence, that this Court failed to question him as to whether his plea of guilty was coerced or involuntary and whether he understood the waiver of his constitutional rights and the consequences of his plea. The People have submitted opposition. The motion is determined as follows.

Initially, the determination of whether to allow a defendant to withdraw a plea of guilty rests within the sound discretion of the trial court (*People v. Lisbon*, 187 AD2d 457 [1992]). Where the totality of the circumstances demonstrate that a plea was knowingly and voluntarily entered, its validity is not undermined by subsequent protestations of innocence (*People v. Graham*, 191 AD2d 353 [1993]).

Here, despite defendant's arguments to the contrary, the stenographic minutes of defendant's guilty plea indicate that the Court did apprise the defendant of the relinquishment of his constitutional rights and the effect thereof. Indeed, the following colloquy took place,

“THE COURT: By entering into the plea of guilty , Mr. Burke, you are giving up certain legal rights. First by pleading guilty you are giving up any right you may have to suppress evidence such as physical objects, if any, taken from you, a statement, if any given by you to the police, an identification of you as a participant in the crime.

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Secondly, by pleading guilty, you are giving up the right to a trial by jury. Do you understand that?

DEFENDANT: Yes.

THE COURT: At a trial by jury you are presumed to be innocent and are entitled to the following rights. You have the right to be represented by your attorney. You have the right to confront and cross-examine witnesses presented by the prosecution, which include the right to see, hear and question in court those witnesses. You have the right to remain silent and not to incriminate yourself. You have the right but are not required to call and present witnesses on your behalf, and to testify yourself, if you choose to do so. Finally, you do have the right to require the prosecution to prove your guilt beyond a reasonable doubt to a jury of twelve people who must be unanimous in finding that you are guilty beyond a reasonable doubt.

Do you understand each of these rights?

DEFENDANT: Yes

THE COURT: Do you understand that by pleading guilty you are giving up each and every one of those rights?

DEFENDANT: Yes.

THE COURT: Mr. Burke, do you understand that by pleading guilty and giving up your right to a trial by jury, you give up any defense you may have on these charges?

DEFENDANT: Yes.

THE COURT: Has your attorney explained this to you, as well as any defenses you may have to this case?

DEFENDANT: Yes.”

Later in the proceeding, the following colloquy took place,

“THE COURT: Other than the sentence promise that has been placed on the record, has anyone, myself, your lawyer, the prosecutor, the police, anyone at all made any promise to you to get you to plead guilty?

DEFENDANT: No.

THE COURT: Has anyone threatened you, forced you, or pressured you to plead guilty against your will?

DEFENDANT: No.

THE COURT: Are you pleading guilty, voluntarily and of your own free will?

DEFENDANT: Yes.”

As evidenced by the stenographic minutes of the defendant's plea proceeding, it is more than evident that the defendant entered his plea of guilty knowingly and voluntarily in the presence of competent counsel after this Court had fully apprised the defendant of the consequences of his plea (*see generally People v. Kagonyera*, 304 AD2d 984 [2003]). It is also clear that the defendant fully admitted to each and every one of the elements of the crime for which he pled guilty (*see* Plea Minutes, Defendant's Exhibit "A", pp. 12-13).

Based on the sum of the foregoing the defendant's motion to withdraw his plea, pursuant to Criminal Procedure Law §220.60[3], is denied and sentencing on this matter is set for March 31, 2006.

The foregoing constitutes the decision and order of this Court.

Dated: March 24, 2006



BARBARA KAHN, J.C.C.