

People v Medina
2007 NY Slip Op 30201(U)
March 15, 2007
Supreme Court, New York County
Docket Number: 0003082
Judge: Michael A. Corriero
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 73

-----x
THE PEOPLE OF THE STATE OF NEW YORK

-against-

Decision
Ind. No. 3082/01

Louis Medina,

Defendant.

-----x

Michael A. Corriero, J.

On May 13, 2001, the defendant, along with co-defendants Robert Velazquez and Jario Gil, went to visit a friend of the defendants. As the defendants were leaving the building they bumped into the victim and watched as he entered the first floor stairwell, laid down and fell asleep. As the victim slept, defendant and his co-defendant Jario Gil, set the victim on fire using scrap pieces of paper they had found in the lobby of the building. After lighting the victim on fire, the defendant and his co-defendants fled the building. The victim awoke in flames and ran outside of the building, where he collapsed. The victim was brought to the hospital but ultimately died from the third degree burns he suffered which covered seventy percent of his body. All the men were caught and arrested shortly after the crime.

On May 18, 2001, defendant was charged with one count of Murder in the Second Degree, in violation of Penal Law §125.25(1), one count of Assault in the First Degree in violation of Penal Law § 120.10 (1), and one count of Arson in the Fourth Degree in violation of Penal Law § 150.05 (1). On October 10, 2001 before this court, the defendant entered a plea of guilty to the reduced charge of Manslaughter in the First Degree in satisfaction of the indictment, and in exchange for the promised determinate sentence of thirteen years imprisonment. Defendant was never advised of the mandatory period of post-release supervision that would automatically follow his release from prison.

Defendant now moves to set aside his sentence pursuant to C.P.L. § 440.20 on the ground that his plea was not knowingly, voluntarily or intelligently made due to the court's failure to advise him of the mandatory period of post-release supervision.

C.P.L. § 440.20 states, in pertinent part, that "the court . . . may, upon motion of the defendant, set aside the sentence upon the ground that it was unauthorized, illegally imposed or otherwise invalid as a matter of law." Here, the court's failure to advise the defendant of the mandatory period of post-release supervision does not render the sentence itself unauthorized, illegally imposed or invalid. Rather, it affects the validity of the plea. Where the plea itself is authorized, legal and otherwise valid, the only remedy to which the defendant would be entitled, is to have his plea vacated pursuant to C.P.L. § 440.10. Accordingly, this court interprets defendant's motion as a request for relief pursuant specifically to C.P.L. § 440.10(1)(h).

C.P.L. § 440.10(1)(h) states that:

"At any time after the entry of a judgment, the court . . . may, upon motion of the defendant, vacate such judgment upon the ground that . . . [t]he judgment was obtained in violation of a right of the defendant under the constitution of this state or of the United States."

In *People v. Catu*, 4 N.Y.3d 242, 825 N.E.2d 1081, 792 N.Y.S.2d 887 (2005), the Court of Appeals held that post-release supervision is a direct consequence of a criminal conviction and, therefore, "[b]ecause a defendant pleading guilty to a determinate sentence must be aware of the post-release supervision component of that sentence in order to knowingly, voluntarily and intelligently choose among alternative courses of action, the failure of a court to advise of post-release supervision requires reversal of conviction." *Id.*

It appears however, that C.P.L. § 440.10 cannot warrant such relief because C.P.L. § 440.10(2)(c) states that:

"the court must deny a motion to vacate judgment when: [a]lthough sufficient

facts appear on the record of the proceedings underlying the judgment to have permitted, upon appeal from such judgment, adequate review of the ground or issue raised upon the motion, no such appellate review or determination occurred owing to the defendant's unjustifiable failure to take or perfect an appeal during the prescribed period or to his unjustifiable failure to raise such ground or issue upon an appeal actually perfected by him."

According to the New York County District Attorney's Office, Appeals Bureau, defendant never filed an appeal.

It is not in dispute that at the time the defendant entered his plea of guilty, the court did not advise him that his sentence would include a five-year period of mandatory post-release supervision following his release from prison.

However, since sufficient facts appear in the record to have permitted adequate review by the Appellate Division of the issue raised in defendant's motion, defendant's failure to take or perfect an appeal precludes him from now raising the claim. *See People v. Pignataro*, 797 N.Y.S.2d 337, 2005 WL 1566693 (4th Dept. 2005); *see generally People v. Cooks*, 67 N.Y.2d 100, 491 N.E.2d 676, 500 N.Y.S.2d 503 (1986).

Therefore, defendant's motion is denied.

This constitutes the decision and order of the court.

Dated: March 15, 2007
New York, NY

010773-MAR 15 2007



Hon. Michael A. Corriero MICHAEL A. CORRIERO