

People v Parreno

2007 NY Slip Op 30202(U)

February 26, 2007

Supreme Court, New York County

Docket Number: 0004818

Judge: Micki A. Scherer

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 81

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PEOPLE OF THE STATE OF NEW YORK

Decision and Order

-against-

February 26, 2007

MARCOS PARRENO,
Defendant.

Ind. No. 04818-2000

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HON. MICKI A. SCHERER:

Defendant moves pursuant to Criminal Procedure Law Section 440.10 to vacate the judgment of conviction in this case. The People oppose the motion.

Although outlined in this court's prior decision dated September 6, 2006 denying the defendant's almost identical motion pursuant to CPL §440.10, for the sake of clarity, the court will again briefly summarize the procedural history of this case.

On June 5, 2001, following a jury trial, the defendant, Marcos Parreno, was convicted of two counts of Robbery in the First Degree, two counts of Robbery in the Second Degree, and two counts of Unlawful Imprisonment in the First Degree. On August 16, 2001, the defendant was sentenced to a determinate sentence of 15 years on each of the robbery counts and an indeterminate term of 1 1/3 to 4 years on the unlawful imprisonment counts. The court ordered that all sentences run concurrently.

Following the imposition of the above sentence, the defendant filed a timely Notice of Appeal and eventually perfected his appeal by filing a brief. The People thereafter responded and the Appellate Division, First Department ultimately affirmed the judgment of conviction on June 24, 2003. *See People v. Parreno*, 306 AD2d 176 (1st Dept. 2003). The defendant filed a further request for leave to appeal to the Court

of Appeals. However, on October 30, 2003, that request was denied. See *People v. Parreno*, 100 NY 2d 644 (2003). Thereafter, the defendant filed a petition for a Writ of Habeas Corpus with the United States District Court for the Southern District of New York. In a written decision by Magistrate Gorenstein dated March 20, 2006, the petition was denied. See *Parreno v. Annetts*, 2006 WL 689511 (SDNY 2006). Subsequently, the defendant filed his first motion pursuant to CPL §440.10 with this court based upon a claim of newly discovered evidence and ineffective assistance of counsel. On September 6, 2006, in a detailed opinion, this court rendered a decision denying the relief requested.

The defendant, having been unsuccessful with his direct appeal, his petition to the federal court, and his first post-judgment motion, moves once again for certain post-judgment relief before this court. Although this motion is not based upon a claim of “newly discovered evidence” as was his prior CPL §440.10 motion, the underlying arguments and documents are basically identical to those attached to the prior motion.

While the court notes that the grounds for relief *vary between the two post-judgment motions*, the defendant’s current claim of ineffective assistance has previously been raised, litigated, and decided. In fact, in his direct appeal, the defendant, through counsel, raised a claim that he received ineffective assistance of counsel. The Appellate Division found that the defendant had, in fact, received effective assistance and that although counsel did not request an alibi charge, this court’s charge conveyed the same principles of such a charge. See, *People v. Parreno, supra*.

The defendant's pro se petition for a writ raised substantially the same issues as his direct appeal, including the claim currently advanced. In a lengthy opinion, Magistrate Gorenstein also found defendant's claim of ineffective assistance of counsel to be without merit. *See Parreno v. Annetts, supra.*

Based upon the foregoing, CPL §440.10(2)(a) states that a court must deny a motion to vacate a judgment when:

The ground or issue raised upon the motion *was previously determined on the merits upon an appeal from the judgment...* ;

(emphasis added).

The court finds that the ineffective assistance of counsel issue was previously raised and affirmed by both the Appellate Division, First Department and the United States District Court for the Southern District of New York.

Accordingly, defendant's motion is denied.

This constitutes the decision and order of the court.



MICKI A. SCHERER, J.S.C.