

**People v Best**

2007 NY Slip Op 30221(U)

March 14, 2007

Supreme Court, Kings County

Docket Number: 0000572

Judge: Robert Kenneth Holdman

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: CRIMINAL TERM: PART 34

THE PEOPLE OF THE STATE OF NEW YORK,

*DECISION AND ORDER*

-against-

HON. ROBERT K. HOLDMAN

EMERSON BEST a.k.a. EMERSON BAKER,

Indictment No.: 572/95

Defendant.

March 15, 2007

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Upon consideration of the defendant's *pro se* motion, dated January 9, 2007, to vacate his judgment of conviction for Sexual Abuse in the First Degree (P.L. § 130.65 [1]), pursuant to C.P.L. § 440.10, and the People's response, dated March 15, 2007, the defendant's motion is denied for the reasons set forth in the People's response.

The defendant was convicted after a jury trial of the aforesaid charges on December 21, 1995, and sentenced on January 21, 1996.

By way of the instant motion, the defendant claims he was denied the effective assistance of trial counsel because counsel allegedly failed to advise the defendant as to possible collateral consequences that a conviction would have upon his immigration status.

First, the defendant fails to assert with any specificity whatsoever as to what his counsel did or did not tell him about the possibility of deportation. Neither does the defendant allege what effect his counsel's advice, or lack thereof, had on his decision to plead guilty or go to trial. As the defendant's motion is unsupported by sworn allegations of fact bearing upon the defendant's claim of ineffective assistance of counsel, it is hereby DENIED. C.P.L. § 440.30 (4) (b).

Second, the defendant has failed to demonstrate that his counsel's representation fell below an objective standard of reasonableness and, further, that he was prejudiced as a result of his counsel's failure to properly advise him of possible deportation after trial conviction.


Unlike those cases that involve convictions predicated upon a plea of guilty (C.P.L. § 220.50 [7]; *see, e.g., People v. McDonald*, 1 NY3d 109 [2003]; *People v. McKenzie*, 4 AD3d 437 [2004]) and similar allegations of a defendant having not been advised of the possible collateral consequences of a conviction, here, the defendant proceeded to trial. Thus, whether trial counsel advised the defendant of the possible consequences of a conviction upon his immigration status is of no import whatsoever. Therefore, the defendant's motion is also DENIED on this basis. C.P.L. § 440.30 (4) (a).

Accordingly, the defendant's motion is denied in all respects without a hearing.

The defendant is hereby advised of his right to apply to the Appellate Division, Second Department, 45 Monroe Place, Brooklyn, New York, 11201, for a certificate granting leave to appeal from this determination. This application must be made within thirty days of service of this decision. Upon proof of financial inability to retain counsel and to pay the costs and expenses of this appeal, the defendant may apply to the Appellate Division for the assignment of counsel and for leave to prosecute the appeal as a poor person and to dispense with printing. Application for poor person relief will be entertained only if, and when, permission to appeal or a certificate granting leave to appeal is granted. 22 N.Y.C.R.R. § 671.5.

SO ORDERED.

MAR 15 2007

HON. ROBERT K. HOLDMAN  
J.S.C.  
  
HON. ROBERT K. HOLDMAN, J.S.C.  
Judge of the Court of Claims

**ENTERED**  
MAR 19 2007  
NANCY T. SUNSHINE  
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: CRIMINAL TERM: PART 34

THE PEOPLE OF THE STATE OF NEW YORK,

*DECISION AND ORDER*

-v-

HON. ROBERT K. HOLDMAN

LOUIE VASQUEZ,

Indictment No.: 4119/80

Defendant.

March 14, 2006

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Upon consideration of the defendant's *pro se* motion, dated January 9, 2007, and the written response by the New York City Probation Department (hereinafter "Department"), dated January 26, 2007, the defendant's motion is granted as set forth below.

The Department is hereby ordered to furnish the defendant a copy of the probation report in the above-captioned matter, without cost to the defendant, within thirty (30) calendar days from the date of this Order. The Department may, however, make any redactions it deems necessary to protect confidential information of witnesses or others interviewed in connection with the report, including, but not limited to shield and tax identification numbers of police officers, home addresses and telephone numbers of civilians and similar items.

In paragraph four of the Department's written response, opposition is cited as to any "prospective application to contest [the] accuracy [of the report by the defendant]." Although the defendant's papers do not appear to request this relief, any such request would be premature at present.

SO ORDERED.

HON. ROBERT K. HOLDMAN  
J.S.C.

  
HON. ROBERT K. HOLDMAN, J.S.C.  
Judge of the Court of Claims

