

People v Tancredi

2007 NY Slip Op 30655(U)

April 9, 2007

Supreme Court, New York County

Docket Number: 0000954/2006

Judge: Carol Berkman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 71

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THE PEOPLE OF THE STATE OF NEW YORK

- against-

Indictment #6160/05
954/06

CARMEN TANCREDI,

Defendant.

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CAROL BERKMAN, J.:

Defendant, convicted on her plea of guilty to two counts of criminal contempt in the first degree and sentenced, on August 23, 2006, to concurrent terms of one-and-one-third to four years on each count, has moved to vacate judgment and set aside her sentence. She previously made such a motion, denied by opinion dated October 31, 2006. She complains, however, that the court did not give her an adequate opportunity to reply. Accordingly, the court has reviewed her new application (contained in multiple letters) to determine whether the interests of justice require entertaining a second application pursuant to Article 440 of the Criminal Procedure Law. In the end, however, defendant raises no new factual issues (other than issues relating to her eviction from her apartment and the whereabouts of her possessions, which have nothing to do with the validity of her conviction¹) and does not rebut the People’s response to the first 440

¹It is indeed unfortunate that defendant did not take the more than adequate notice she was given at her plea to make appropriate arrangements for her apartment and her belongings. Instead, she apparently presumed notwithstanding the advice of counsel that her plea would be vacated. Tragically, defendant’s obsessive conduct may well be the product of psychiatric issues,

application. This application is accordingly denied pursuant to C.P.L. §440.10(3).

Defendant continues to argue the validity of her previous contempt conviction notwithstanding her unsuccessful appeal of that conviction. She again complains with respect to her first indictment that the prosecutor gave her permission to call the complainant, but this issue was discussed with defendant at length when she entered her plea. The People claim a different level of permission than does defendant, but in entering her plea, defendant explicitly waived her right to try this factual issue. Defendant makes statutory speedy trial claims, but aside from their lack of merit, those arguments were waived by her guilty plea. She claims she did not receive a signed copy of the order of protection with respect to the second indictment, but, assuming this to be the case, this court on the record clearly and plainly explained the order and clearly and plainly explained that the “permission” allegedly given by the prosecutor was null and void. She complains that the plea negotiation was not her idea, but negotiated between defense counsel and prosecutor, but she accepted the plea voluntarily.

She complains that the court did not adequately explain what would happen if defendant did not fulfill the conditions of the guilty plea; she complains that she is subject to deportation by reason of the plea, as the court repeatedly warned her; she complains that counsel did not represent her properly when she moved to withdraw her plea; she complains that she only agreed to leave the country in exchange for a promise that all charges would be dismissed, or that she would be given a misdemeanor. All of these are matters of record to be raised on appeal, if only the record supports her arguments.

which defendant denies, but the complainant is entitled to the law’s protection and defendant showed no willingness to cooperate with a psychiatric treatment regimen.

In short, as this court previously noted in connection with the first 440 application, many of defendant's factual allegations are conclusively refuted by the record. To the limited extent that there are unresolved factual issues, they relate to matters of record, and are not properly raised by a post-judgment application, but are matters for direct appeal. Accordingly, no hearing was or is required in connection with these "issues."

The motion for post-conviction relief is in all respects again denied.

It is so ordered.

Dated: New York, New York
April 9, 2007



BERKMAN, J.