

People v Barrow

2007 NY Slip Op 30663(U)

April 10, 2007

Supreme Court, New York County

Docket Number: 0009918/1999

Judge: Charles H. Solomon

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 82

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THE PEOPLE OF THE STATE OF NEW YORK, : **DECISION AND ORDER**
: INDICTMENT 9918-99
-against- :
:
:
JAMAL BARROW, DEFENDANT :
-----X
CHARLES H. SOLOMON, J.:

On March 16, 2001, defendant was convicted, after a jury trial, of the class B violent felony of Assault in the First Degree and related offenses. On June 1, 2001, he was sentenced to concurrent prison terms, the longest of which was a ten year determinate term. He is currently serving those sentences.

In a motion filed on December 21, 2006, defendant has moved pursuant to CPL 440.10(1)(h) to vacate the judgment of conviction. He alleges that one of his attorneys, Murray Richman, who had been retained to represent him at trial, did not provide him with effective representation during plea negotiations, and that as a result, he should be granted a new trial. Specifically, defendant contends that counsel failed to object to what defendant characterizes as the prosecution's improper use of defendant's juvenile delinquency adjudication during plea negotiations. In their response filed on March 16, 2007, the People oppose defendant's application. The Court is also in receipt and has considered defendant's surreply dated March 30, 2007, and filed with the Court on April 3, 2007.

CPL 440.10(3)(c) states that a court *may* deny a defendant's motion to vacate the judgment of conviction when:

(c) Upon a previous motion made pursuant to this section, the defendant was in a position adequately to raise the ground or issue underlying the present motion but did not do so.

Here, a brief recitation of the post-conviction history of this case is in order, and demonstrates why this Court is compelled to deny defendant's motion.

On March 5, 2002, defendant moved pursuant to CPL 440.10(1)(h) to vacate the judgment of conviction alleging that he was denied effective representation of counsel. Defendant set forth a host of reasons in support of his motion. Defendant's present claim, however, was not among them. The People opposed defendant's initial application in a written response dated July 2, 2002, to which defendant filed a further written reply on July 29, 2002. While that motion was pending before this Court, defendant moved to expand the grounds for relief to include a claim under CPL §440.10(1)(g) that because of newly discovered evidence his conviction should be set aside. In a decision filed on November 13, 2002, the Court ordered a hearing pursuant to CPL §440.30(5).

The hearing on defendant's motion began on November 13, 2002 and was conducted over twelve days, concluding on December 13, 2002. At the hearing, defendant offered the testimony of his two trial attorneys, Murray Richman and Ian Niles. Defendant also called Diarmuid White, who was retained to represent him at sentencing. In addition to other witnesses, Barrow called Matthew Middleton, who was Niles' law partner during the period in question and who had been Barrow's business and entertainment attorney. Finally, defendant himself testified at the hearing. Defendant also introduced in evidence at the hearing over one hundred exhibits in support of his various claims of ineffective assistance of counsel and newly discovered evidence.

At the conclusion of the presentation of evidence, following oral argument by counsel, post-hearing memoranda were filed by the defense on January 21, 2003, and the prosecution on March 28, 2003. In their memoranda, counsel set forth in great detail the extensive testimony elicited at the hearing. In a written decision filed July 2, 2003, defendant's motion was denied in

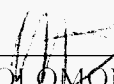
its entirety.

Thereafter, defendant appealed his conviction. The Court's denial of defendant's CPL 440.10 motion was consolidated with defendant's direct appeal. The Appellate Division, First Department affirmed the judgment of conviction. In addition, that court specifically found that defendant had received effective assistance of counsel and that his CPL 440.10 motion was properly denied. People v. Barrow, 19 AD3d 189, 191 (1st Dept 2005). Defendant then sought leave to appeal to the Court of Appeals which was denied on February 21, 2006. People v. Barrow, 6 NY3d 809 (2006).

Defendant had a more than ample opportunity to raise and litigate the present claim in his prior CPL 440.10 motion and failed to do so. Therefore, under CPL 440.10(3)(c), the Court declines to entertain defendant's motion. Furthermore, the Court notes that defendant's motion is procedurally barred under CPL 440.10(2)(a), since his claim of ineffective assistance of counsel was previously raised and was thoroughly and comprehensively litigated and the denial of that prior motion was affirmed on appeal. For the reasons set forth above, defendant's motion is denied.

This opinion constitutes the decision and order of the Court.

Dated: April 10, 2007
New York, New York



CHARLES H. SOLOMON, J.S.C.