

People v Smith

2007 NY Slip Op 30707(U)

April 11, 2007

Supreme Court, Kings County

Docket Number: 0009542/2000

Judge: Raymond Guzman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS – PART 9

-----X
THE PEOPLE OF THE STATE OF NEW YORK

DECISION AND ORDER
Indictment #9542/00

-against-

REGGIE SMITH,

Defendant.

-----X
RAYMOND GUZMAN, J.S.C.

The defendant was charged under Indictment #9542/00 with criminal possession of a weapon in both the third degree (a class D violent felony under PL §265.02[4]) and fourth degree (a class A misdemeanor under PL §265.01[1]).

On March 21, 2001, the defendant plead guilty to both crimes pursuant to an agreement whereby the defendant's sentencing would be adjourned for an unspecified period of time, during which the defendant would be obliged to adhere to certain requirements; if the defendant complied with these requirements, his felony plea would be vacated at his sentencing proceeding, and he would be sentenced for the misdemeanor to three years' probation and up to 90 days' house arrest.

At the defendant's sentencing proceeding on January 8, 2003, a representative of the Department of Probation reported that the defendant was "doing very well." With the People's consent, the court vacated the defendant's felony plea, and sentenced the defendant to three years' probation for the misdemeanor of criminal possession of a weapon in the fourth degree (Barros, J. at plea and sentence).

In papers dated March 19, 2007, and referred to this court on April 5, 2007, the defendant, who is represented by counsel on this motion, states that he expected his three-year

sentence of probation to expire on January 7, 2006, after he had served three years under probation supervision without having been “violated.” Instead, the defendant advises, his Probation Officer has told him that he is on five years’ probation, and that the Department of Probation will not terminate his supervision. The defendant therefore moves this court to terminate his probation in conformity with the sentence imposed by the court on January 8, 2003. In support of his application, the defendant submits (1) the minutes from his plea and sentencing proceedings (on March 21, 2001 and January 8, 2003, respectively), and (2) a “Certificate of Disposition” for Indictment #9542/00, dated January 19, 2006, and signed by the Kings County Supreme Court Clerk, erroneously reporting that the defendant was convicted of criminal possession of a weapon in both the third and fourth degrees.¹

In papers dated April 4, 2007, the Department of Probation replied to the defendant’s motion, explaining that a clerical error was made in the defendant’s “Conditions of Probation,” mistakenly indicating that the defendant was convicted of criminal possession of a weapon in the third degree (PL §265.02), a crime for which a five-year sentence of probation is the minimum authorized. Accordingly, the Department joins the defendant in moving this court to issue an order terminating the defendant’s probation.

Based on a review of the Supreme Court case file and the papers filed by both the Department of Probation and the defendant, including the documents appended thereto, this court finds the record clear: the defendant was convicted under Indictment #9542/00, on January 8, 2003, of only one crime – the misdemeanor of criminal possession of a weapon in the fourth degree – and the court imposed a legally authorized sentence of three years’ probation for that

¹It should be noted that there is also an error in the defendant’s motion papers; the motion wrongly states that the defendant plead to criminal possession of a controlled substance in the 3rd and 7th degrees, in addition to criminal possession of a weapon in the 4th degree, and that he was ultimately sentenced on “two misdemeanor convictions” (CPCS-7 and CPW-4).

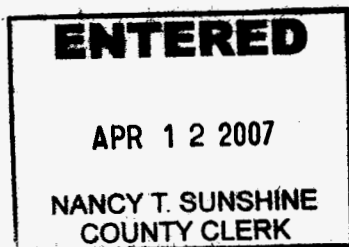
conviction. This court found only one document stating that the defendant was convicted of the felony of criminal possession of a weapon in the third degree, namely, the Certificate of Conviction submitted with the defendant's papers (referenced *supra*).

This court could not discern the likely source of the error in the Certificate of Disposition; contrary to the Department of Probation's assertion, the "Conditions of Probation," dated January 8, 2003, correctly reflects the defendant's conviction of "CPW 4°." (Another document, the "Conditions of Interim Probation," makes reference to "CPW 3°," but is dated August 10, 2001, *i.e.*, after the defendant's plea and before his conviction and sentencing.)

In any event, the defendant's motion is granted. The Department of Probation is hereby ordered to terminate the defendant's probation supervision pursuant to the sentence of three years' probation imposed on January 8, 2003. The Kings County Supreme Court Clerk is likewise ordered to correct the record to delete the erroneous reference to the defendant's conviction of criminal possession of a weapon in the third (3rd) degree (PL §265.02 [4]), and to issue the defendant a Certificate of Disposition reflecting that correction.

The foregoing constitutes the opinion, decision and order of the court.

Dated: April 11, 2007
Brooklyn, New York



Raymond Guzman
Supreme Court Justice

A handwritten signature in black ink, appearing to be "Raymond Guzman", written over a horizontal line. Below the line, the name "Raymond Guzman" and title "Supreme Court Justice" are printed.