

People v Grant

2007 NY Slip Op 31096(U)

May 4, 2007

Supreme Court, Kings County

Docket Number: 0002152/2000

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CRIMINAL TERM: PART 26

-----x
THE PEOPLE OF THE STATE OF NEW YORK

Decision and order

- against -

Indictment No.
215/2000
May 4, 2007

ERNEST GRANT Defendant,
-----x

PRESENT: HON. LEON RUCHELSMAN

The defendant has filed a motion to vacate the judgement pursuant to CPL §440.10. The underlying facts which support this motion are as follows. At approximately 4:25 p.m. on January 5, 2000 an undercover drug transaction had taken place behind 456 Dekalb Avenue in Kings County. Moments after receiving the transmission that a drug transaction had taken place Detective Patrick Carlson approached the location. The detective arrived at the location and observed individuals who matched the descriptions which had been provided by the undercover officer. Carlson then approached the individuals and placed him under arrest. A search of the defendant Grant revealed a beeper, and a further search of the vehicle revealed four vials of crack and some firearm ammunition located under the driver's seat. The defendant was indicted on various drug possession and drug sale charges, entered a plea of not guilty and proceeded to trial. After the trial the jury convicted defendant of Criminal Sale of a Controlled Substance in the Third Degree (PL §220.39(1)) and on may 24, 2000 the defendant was sentenced to twelve and a half to twenty five years as a second felony offender.

The defendant's conviction was affirmed by the Appellate Division and leave to appeal to the Court of Appeals was denied (see, People v. Grant, 309 AD2d 764, 765 NYS2d 275 [2d Dept., 2003], People v. Mejias, 1 NY3d 572, 775 NYS2d 789 [2003]). The Appellate Division concluded that the defendant's verdict of guilt was proper and that issues raised in defendant's supplemental pro se brief were either unpreserved or without merit.

The defendant now moves pursuant to CPL §440.10 seeking to vacate the judgement or to be granted a hearing to determine whether to vacate the judgement on various grounds. Those grounds consist of allegations that his attorney failed to utilize adequate defense strategy and that his counsel was not made aware of a second undercover officer, necessitating a reversal of the conviction and that the defendant's Constitutional rights were violated. The People answered the motion objecting to the contentions of the defendant. This court now makes the following determination.

Concerning the defendant's contention that his attorney failed to pursue a proper defense strategy and hence, his Constitutional right to effective assistance of counsel was violated, it is true that for a claim of ineffective assistance of counsel to be successful the defendant must overcome the strong presumption that the attorney provided reasonable assistance (People v. Baldi, 54 NY2d 137, 444 NYS2d 893 [1981]). A claim of ineffective assistance

of counsel may not be based upon unsuccessful trial strategy (People v. Ruscitti, 163 AD2d 431, 559 NYS2d 19 [2d Dept., 1990]). In this case the defendant's sole claim of ineffectiveness arises from counsel's failure to pursue alleged misinformation provided by the prosecution concerning the existence of another undercover officer. However, the record is clear that counsel was aware of the second undercover officer well in advance of trial. Moreover, defense counsel vigorously defended defendant and cogently and consistently sought to undermine the People's case (see, People v. Cooper, 303 AD2d 776, 756 NYS2d 339 [3rd Dept., 2003], People v. Walston, 277 AD2d 593, 715 NYS2d 593 [3rd Dept., 2000], People v. Brockway, 277 AD2d 482, 715 NYS2d 476 [3rd Dept., 2000]). Most importantly, the defendant has failed to demonstrate how this alleged ineffectiveness would have affected the outcome of the trial (People v. Toellner, 299 AD2d 567, 750 NYS2d 646 [2d Dept., 2002]). This one fact had no relationship to the actual crimes committed, does not in any way help exonerate the defendant and in no way serves to help the defenses he raised during the trial. Thus, there has been no colorable showing which would raise the allegation that the defendant was denied effective assistance of counsel.

Therefore, based on the foregoing the defendant has failed to raise any issue requiring a vacatur of the convictions or a hearing on the matter and consequently the defendant's motion is

hereby denied.

This shall constitute the decision and order of the court.

DATED: May 4, 2007
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC

ENTERED
MAY - 8 2007
NANCY T. SUNSHINE
COUNTY CLERK