

**People v Rice**

2007 NY Slip Op 31194(U)

May 3, 2007

Supreme Court, Kings County

Docket Number: 0003684/1977

Judge: Gustin L. Reichbach

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 27

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THE PEOPLE OF THE STATE OF NEW YORK,	:	
	:	Indictment #: 3684/77
	:	3995/77
	:	16/78
	:	3407/85
-against-	:	
	:	By: Hon. G. Reichbach
	:	<b>DECISION AND ORDER</b>
	:	Date: May 3, 2007
ADRIAN RICE,	:	
Defendant	:	
<hr/>		x

Defendant has filed a *pro se* motion pursuant to C.P.L. §440.10(1) to vacate the convictions under the above-referenced indictments. He alleges that the convictions were obtained in violation of his constitutional rights in that his lawyer was not present and he was not advised of each of the rights he had waived by pleading guilty, as required by *Boykin v. Alabama*, 395 US 238, and therefore his plea was not knowingly and voluntarily made.

On indictment 3684/77, defendant pleaded guilty to the indictment, which included a top count of Robbery in the 1<sup>st</sup> Degree. He was sentenced to a period of incarceration of 0 to 7 years. On Indictment 3995/77, Defendant pleaded guilty to the indictment, including two counts of Robbery in the 1<sup>st</sup> Degree and was sentenced to a period of incarceration of 0 to 7 years to run concurrently with indictment 3684/77. Under indictment 16/78, the defendant pleaded guilty to Attempted Robbery in the 1<sup>st</sup> Degree, and received a sentence of 0 to 7 years incarceration to run concurrent with the other two indictments. These pleas were all entered on March 16, 1978.

On April 17, 1986, Defendant pleaded guilty to Attempted Robbery in the 1<sup>st</sup> Degree in exchange for a sentence of incarceration for 5 to 10 years in satisfaction of indictment 3407/85. The People have provided the minutes for all plea and sentencing proceedings related to these indictments, with the exception of the sentencing minutes for Indictment 3407/85, which have been lost. The minutes reveal that defendant was represented by counsel at all proceedings for which minutes are available and was fully informed of his constitutional rights by the court at each of the proceedings.

Defendant makes reference in his motion to a Violation of Probation proceeding at which he was sentenced to 4 years incarceration. He alleges that he had previously pled guilty to Criminal Possession of a Weapon in the 4<sup>th</sup> Degree, a Class A Misdemeanor, and received a sentence of 3 years probation. He states the sentence of imprisonment was imposed after he was sentenced to 0 to 7 years on the previously mentioned indictments. He claims that no attorney was present at the probation violation proceedings. The sentencing minutes of May 16, 1978 reflect that his counsel was aware of a possible violation of probation and mentioned it to the court. The sentencing judge noted on the record that the sentence of probation was issued by a judge sitting in Manhattan Criminal Court, and that the Brooklyn judge therefore had no jurisdiction over the matter. Similarly, this Court has no jurisdiction over a matter derived from a plea, sentence, and violation of probation which occurred in New York County.


Defendant's claims are belied by the record. The plea minutes indicate that the defendant was fully and thoroughly advised of each of his constitutional rights and that his attorney on each case was present and participated at the plea proceedings. The minutes also reflect that defendant was advised that he faced enhanced punishment for future felony convictions. And finally, the

minutes reflect that the defendant pled guilty voluntarily and was not forced, threatened or promised anything to enter that plea. The motion on 3684/77, 3995/77, and 16/78 is denied without a hearing pursuant to C.P.L. §440.30 (4)(d) (i), since an allegation of fact essential to support the motion is contradicted by a court record.

While no sentence minutes are available for Indictment Number 3407/85, the Court finds that the defendant has failed to sustain his burden of substantiating his claim. There is a presumption of regularity that he has not rebutted regarding the propriety of the sentencing proceeding, *See, People v. Dominique*, 90 NY2d 880 (1997), and the credibility of his claim is in question due to the twenty-two year delay in asserting it. *See, People v. Nixon*, 21 NY2d 338 (1967). Under the circumstances, there is no reasonable possibility that the claim is true, and therefore, the motion is denied pursuant to C.P.L. §440.30 (4)(d) (ii).

Defendant's motion is denied in its entirety.

This constitutes the decision and order of the Court.

  
**HON. GUSTIN L. REICHBACH**  
**N.Y.S. SUPREME COURT**  
Gustin L. Reichbach  
J.S.C.

**ENTERED**  
MAY 10 2007  
NANCY T. SUNSHINE  
COUNTY CLERK