

People v Rodriguez

2007 NY Slip Op 31471(U)

May 8, 2007

Supreme Court, New York County

Docket Number: 0006966/1996

Judge: William A. Wetzel

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 34

	X
THE PEOPLE OF THE STATE OF NEW YORK	:
	:
-against-	:
	:
	:
ASUNCION RODRIGUEZ A/K/A FERNANDO	:
RODRIGUEZ,	:
Defendant.	:
	X

DECISION AND ORDER
Index No. 6966/96

APPEARANCES:

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WILLIAM A. WETZEL, J.:

The defendant was indicted by a New York county grand jury for the crimes of Criminal Sale of a Controlled Substance in the Third Degree (Penal Law § 220.39(1)), Criminal Possession of a Controlled Substance in the Third Degree (Penal Law § 220.16(1)), and Criminal Possession of a Controlled Substance in the Fifth Degree (Penal Law § 220.06(5)). On March 23, 2006, the defendant pled guilty to Criminal Sale of a Controlled Substance in the Fifth Degree, (Penal Law § 220.31). He was promised a sentence of incarceration of 2 to 4 years. to

run concurrently with the same sentence on another open indictment, 6006/05. On April 17, 2006, the defendant was adjudicated a second felony offender based upon his 1991 conviction for Attempted Criminal Sale of a Controlled Substance in the Third Degree. He was sentenced as promised to a term of 2 to 4 years incarceration, to run concurrently with the same on the other indictment. At the time of sentencing, the court recommended on the record that the defendant be placed in the CASAT program, but informed the defendant that this was solely a recommendation to the Department of Corrections, not a promise.

The defendant now brings a motion to vacate the judgment of conviction pursuant to CPL §§ 440.10, 440.20, alleging a potpourri of claims. He argues that his guilty plea was neither knowing nor voluntary, that his attorney was ineffective, and that his case should have been dismissed pursuant to CPL § 30.30. These claims will be addressed *seriatim*. For the reasons which follow, the defendant's motion is in all respects denied.

The Defendant's Plea was Knowing and Voluntary

As a threshold matter, it must be noted that this defendant was no novice in the criminal justice system. He had a 1991 felony conviction for Attempted Criminal Sale of a Controlled Substance in the Third Degree. The instant indictment accused him of the felony sale and possession of drugs, and he had another pending indictment involving a felony narcotics charge. Under these circumstances, the defendant faced substantial jail time if convicted on both pending indictments. He recognized, as well he should have, that the People's offer of 2 to 4 years incarceration concurrent on both indictments was virtually a bargain basement offer which he was wise to accept, given the alternative.

It is well-settled that a defendant's guilty plea must be voluntary, knowing, and intelligent. People v. Harris, 61 NY2d 9, 17 (1983), on remand at People v. Alicea, 99AD2d 815 (2nd Dept. 1984). A plea is voluntary if it is "an intelligent choice among the alternative courses of action open to the defendant." People v. Ford, 86 NY2d 397, 403 (1995), quoting North Carolina v. Alford, 400 US 25, 31 (1970). A trial court should advise the defendant of all of the rights which he is giving up when he enters a plea of guilty, e.g., the right to a trial by jury, the right to be represented by counsel appointed by the court if the defendant is unable to afford counsel, etc. Further, the court should inform the defendant of all of the direct consequences of a plea of guilty, People v. Catu, 4 NY3d 242 (2005), and ascertain that the defendant fully understands the meaning of the plea. People v. Torres, 45 NY2d 751, 753 (1978); People v. Ford, supra, at 403. The transcript of the plea and sentence in this case amply demonstrate that this defendant was fully and properly informed of his choices and all of his rights attendant to the plea, and that he fully understood the consequences of a plea of guilty.

At the time of the plea on March 23, 2006, the defendant informed the court, under oath, and in the presence of his attorney, that he was entering a plea of guilty of his own will. He acknowledged that he was not pleading guilty as a result of any threats or coercion, but was pleading guilty voluntarily because he was in fact guilty. The court conducted a thorough allocution at which time the defendant waived all the rights to which he was entitled. He also executed a written waiver of his right to appeal. As previously noted, the defendant had extensive prior experience with the criminal justice system, including a guilty plea to a felony in 1991, and that experience undoubtedly assisted him in understanding the meaning of taking a plea as opposed to going to trial. See People v. Miller, 42 NY2d 946, 947 (1997); People v.

Williams, 210 AD2d 168 (1st Dept. 1994). Accordingly, it is clear from this record that the defendant's plea was in all respects proper.

Defense Counsel's Alleged Ineffectiveness: The CASAT Issue

As the record shows, the court informed the defendant that it would be willing to recommend that defendant be enrolled in the CASAT program, and that recommendation was noted on the commitment papers. The defendant complains that his attorney "assured him" that he would "definitely receive the CASAT program." Def. Motion at p. 3. He asserts that his attorney told him that he would "receive CASAT and be out within six months." Id. at p. 4. The defendant has not supplied any affidavit or other proof that his attorney made these assurances. In any event, the defendant's claims are unavailing. It is well-established that "the plea minutes establish defendant's full understanding of the terms of the plea bargain." See People v. Hardy, 290 AD2d 221 (1st Dept. 2002), and there is no credible evidence that he was "lured into pleading guilty," Id., by the discussion of the CASAT program. The defendant told the court unequivocally that the plea was based solely upon the promises as set forth on the record in the presence of counsel during the plea allocution. The defendant indicated that no other promises had been made to him in order to convince him to plead guilty. It is clear that the defendant entered into his plea bargain because it was a great deal for him in view of the other possible outcomes which entailed far more jail time if convicted. His tardy assertions of the CASAT promise provide him no relief here. See People v. Thompson, 299 AD2d 202(1st Dept. 2002) ("Since defendant did not succeed in being accepted by a drug program as required by the terms of her plea agreement, the court properly exercised its discretion in imposing the sentence, defendant had been warned to expect in the event that she failed to enter and complete the

program.”); People v. Thompson, supra, (“We reject defendant’s claim that he was lured into pleading guilty by the offer of a drug program for which he had no chance of being accepted.”).

Finally, the uncontested benefit of this plea bargain in terms of reduced jail time cannot be underemphasized. As a predicate felon under the drug laws applicable to his case, this defendant faced up to 12 ½ to 25 years upon conviction on the top count, a class B felony, in this case. Significantly, the minimum sentence defendant could have received on a plea to a charge under the 1996 drug laws as a predicate felon was 4 ½ to 9 years. Before the defendant entered this plea, the prior offer by the People had been a plea to a “C” felony with a sentence of 3 to 6 years. Therefore, the ultimate sentence of 2 to 4 years incarceration, which the defendant actually received as a result of his plea, was better than the offer made up to the date of the plea, and far, far better than the 12 ½ to 25 years which he was eligible to receive. The icing on this cake was the offer of the identical sentence, to run concurrently, on yet another pending felony narcotics indictment! Obviously, the two indictments related to separate criminal incidents, and any court would have been justified in running the time on those indictments consecutively. In view of all these circumstances, it is no hyperbole to describe this disposition as a “bargain basement deal.” The fact that defense counsel was able to convince the People and the court to accept this plea bargain was evidence of his truly stellar performance on behalf of this defendant.

The CPL § 30.30 Motion

On March 23, 2006, the defendant’s case was sent to this court because the defendant had heretofore refused all offers of disposition, and the People had announced their readiness for trial. Defense counsel filed a CPL § 30.30 motion upon entering the courtroom, alleging that the defendant’s speedy trial rights had been violated and that the court should dismiss the charges.

The court denied the motion as untimely. The defendant now asserts that his attorney was ineffective because he waited until the last minute to file this motion, and that the court should have considered the motion on its merits. Neither of these arguments affords defendant any relief.

Clearly, the § 30.30 motion was untimely. A defendant must file a § 30.30 motion before the commencement of trial, upon reasonable notice to the People. CPL § 210.20(1)(g), (2); CPL 210.45 (1); see also People v. Lawrence, 64 NY2d 200 (1984). Failure to comply with these statutory procedural requirements results in a waiver of claims. Lawrence, supra, at 203. People v. DeRosa, 42 NY2d 872, 873 (1977). Since defense counsel filed the motion on the day that the People answered ready for trial, the motion was patently untimely and was denied on that basis alone.

Assuming, *arguendo*, that the motion had been timely filed, it would have been denied.

At the outset, this court did not entertain the defendant's § 30.30 motion on March 23, 2006, because it was untimely filed, and this court certainly does not intend to entertain the motion in full over a year later in May of 2007! In any event, even a cursory examination of the progress of this case, recorded on the court file and movement sheet, made it clear to this court that the People were nowhere near exhaustion of their time to answer ready for trial in this case. CPL § 30.30(1)(a) provides in pertinent part that the People have 6 months to bring the defendant to trial on a case involving a felony charge. It was clear to the court in March of 2006, and it is clear to this court today, that the People were well within that statutory time period. See also, People's Aff. at pp. 4-5, analyzing each adjournment pursuant to CPL § 30.30.

Finally, although defense counsel filed the motion on March 23, the court's recollection is that there was little if any discussion of the merits of the § 30.30 motion because the defendant

was focused on the new and even more advantageous plea offer made by the People on that day. At no time during the plea negotiation or allocution did the defendant ever register his desire to stop the process and adjourn the case for the People to respond in writing to the §30.30 motion and for the court to issue a written decision. Once he was presented with a spectacularly advantageous plea offer, the defendant abandoned any interest in his § 30.30 motion and entered the plea. In view of the totality of these circumstances, the defendant's claim that his speedy trial rights were violated is utterly specious.

The Overarching Ineffective Assistance of Counsel Claim

The defendant asserts that the combination of the “false promise” regarding the CASAT program and the tardy CPL § 30.30 motion rendered his counsel's representation ineffective. Defendant attempts to bolster his claim by advertizing to defense counsel's recent suspension from the practice of law by the Appellate Division, First Department, based upon matters entirely unrelated to the defendant's case, see generally In re Aranda, 32 AD3d 58 (1st Dept. 2006). The defendant's claims in this regard are so frivolous as to be laughable.

Analysis of an ineffective assistance of counsel claim begins with the well entrenched principle that “[o]ur] state standard for effective assistance of counsel has long been whether the defendant was afforded meaningful representation [*citations omitted*]. Applying this standard, [the Court of Appeals] has emphasized the difference between ineffective representation and losing trial tactics [*citations omitted*].” Indeed, counsel's performance will not be considered ineffective, even if unsuccessful, as long as it reflects an “objectively reasonable and legitimate trial strategy under the circumstances and evidence presented[*citations omitted*].” People v. Berroa, 99 NY2d 134, 138 (2002); see also People v. Henry, 95 NY2d 563, 565 (2000). habeas

corpus granted 409 F3d 48 (2nd Cir. 2005) cert denied __US __, 126 S. Ct. 1622. Further, “in applying this standard, counsel’s efforts should not be second guessed with the clarity of hindsight to determine how the defense might have been more effective. The Constitution guarantees the accused a fair trial, not necessarily a perfect one [*citations omitted*]. That a defendant was convicted may have little to do with counsel’s performance, and courts are properly skeptical when disappointed prisoners try their former lawyers on charges of incompetent representation.” People v. Benevento, 91 NY2d 708,712 (1998); see also People v. Butler, 273 AD2d 613, 615-6 (3rd Dept. 2000) lv. denied, 95 NY2d 933.

Thus, “where as here, the evidence, the law and the circumstances of a particular case, viewed together and as of the time of representation, reveal that meaningful representation was provided. defendant’s constitutional right to the effective assistance of counsel has been satisfied.” People v. Satterfield, 66 NY2d 796, 798-9 (1985). In this regard, the Court of Appeals “has clarified meaningful representation to include a prejudice component which focuses on the ‘fairness of the process as a whole rather than any particular impact on the outcome of the case’”. People v Henry, 95 NY2d 563, 566 (2000); see also People v. Ozuna, 7 NY3d 913, 915 (2006). Most importantly, “the benchmark for judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 US 668, 686 (1984); People v. Schulz, 4NY3d 521,531 (2005).

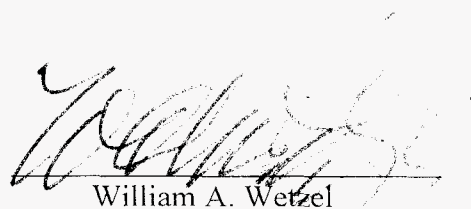
Application of the foregoing well established principles to the case at bar leads to the inexorable conclusion that the defendant’s ineffective assistance of counsel claim is, as previously stated, laughable. Specifically, the record conclusively demonstrates that defense counsel negotiated a spectacularly beneficial plea bargain for this defendant, limiting what could

have been a minimum of approximately 16 years in prison to a total package of 2 to 4 years in prison. As to the CPL § 30.30 claim, it is true that defense counsel could have filed the motion earlier, resulting in a full written response from the People, and a written decision from this court. However, notwithstanding the untimely filing of the motion, at the end of the day that decision would have been exactly the same as it was on March 23, 2006: the motion would have been denied on the merits and the defendant left in the same position, that is, with the choice of pleading guilty or going to trial. As the record stands, the defendant, properly advised by his attorney, made the right decision and minimized his exposure to incarceration. Clearly, the clients' whose cases were considered by the Appellate Division, First Department, in the disciplinary proceeding against defense counsel had some credible basis to complain about counsel's performance. But this defendant has no legitimate complaints.

In view of the foregoing, the defendant's motion is in all respects denied.

The foregoing constitutes the Decision and Order of the court.

Dated: May 8, 2007
New York, NY



William A. Wetzel

HON. WILLIAM A. WETZEL