

People v Scott

2007 NY Slip Op 32038(U)

July 10, 2007

Supreme Court, Queens County

Docket Number: 0002345/2005

Judge: Gregory L. Lasak

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SUPREME COURT OF THE STATE OF NEW YORK
CRIMINAL TERM: PART K-23

P R E S E N T: HON. GREGORY L. LASAK,
Justice.

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

- against-

Indictment No.: 2345/05

LEROY SCOTT,

Motion: To Vacate Judgment of
Conviction pursuant to CPL 440.10

Defendant.

-----X

DEFENDANT PRO SE

For the Motion

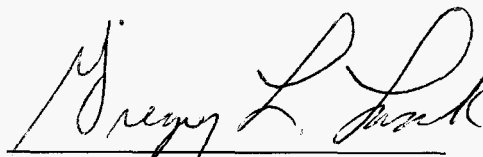
RICHARD A. BROWN, D.A.

BY: A.D.A. QUYNDA HENRY

Opposed

Upon the foregoing papers, and due deliberation had, the motion is denied. See accompanying memorandum this date.

Kew Gardens, New York
Dated: July 10, 2007



GREGORY L. LASAK
JUSTICE SUPREME COURT

SUPREME COURT, QUEENS COUNTY
CRIMINAL TERM, PART K-23

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

BY: GREGORY L LASAK, J.S.C.

- against -

Indictment No.: 2345/05

LEROY SCOTT,

Defendant.

-----X

The following constitutes the opinion, decision and order of the Court.

By motion, dated May 2, 2007, defendant seeks an order of the court to vacate the judgment of conviction upon the grounds that he received ineffective assistance of counsel.

Defendant's specific claim is that he was denied effective assistance of counsel because his counsel failed to file pre-trial motions that were favorable; counsel failed to conduct legal research; counsel failed to question witnesses; counsel gave poor opening and closing statements; and counsel failed to develop the record.

In response, the People have filed an affirmation in opposition dated June 29, 2007, whereby they assert that defendant's motion should be denied in its entirety because the on the record claims and procedurally barred.

On October 26, 2006, defendant filed a notice of appeal.

For the reasons stated herein, defendant's motion is denied.

FACTS

A trial was held before this court and on September 20, 2006, defendant was found guilty by a jury of Attempted Murder in the Second Degree, Robbery in the First Degree (2 counts), Robbery in the Second Degree (5 counts), Criminal Possession of a Weapon in the Second Degree, Criminal Possession of a Weapon in the Third Degree, Criminal Possession of Stolen Property in the Third

Degree, and Reckless Endangerment in the First Degree. On October 19, 2006, defendant was sentenced by this court to a determinate sentence of twenty five (25) years for the Attempted Murder and Robbery in the First Degree charges, fifteen(15) years for the Robbery in the Second Degree and Criminal Possession of a Weapon in the Second Degree, seven (7) years for the Criminal Possession of a Weapon in the Third Degree charge all to run concurrently with an indeterminate sentence of three and one half to seven years (3 ½ to 7) for the Reckless Endangerment in the First Degree and Criminal Possession of Stolen Property in the Third Degree.

DECISION

Defendant's Claim of Ineffective Assistance of Trial Counsel is Procedurally Barred and Lacks Merit.

Defendant claims he was denied effective assistance of counsel. This Court views defendant's claims as unpersuasive and without merit.

Specifically, defendant claims that he was denied effective assistance of counsel because his attorney failed to file motions, conduct research, ask proper questions during trial and gave poor opening and closing statements.

In any event, as to the issues raised by defendant concerning the conduct of counsel which may not appear on the record, defendant has failed to conform to the statute. The allegations are unsupported by factual recitation or affidavit or other evidence.

Criminal Procedure Law Section 440.30 (4)(b) and (4)(d)(I) states that the motion may be denied without conducting a hearing. Under CPL 440.30(4)(b) no hearing need be conducted when:

The motion is based upon the existence or occurrence of facts and the moving papers do not contain sworn allegations substantiating or tending to substantiate all the essential facts . . . ; or (d) An allegation of fact essential to support the motion (i) is contradicted by a court record or other official document, or is made solely by the defendant and is unsupported by any other affidavit or evidence, and (ii) under these and all the other circumstances attending the case, there is no reasonable possibility that such allegation is true.

Here, defendant has not conformed to the statute and bases his assertions only upon his own allegations without anything further.

The Court now turns to a discussion of the standard for determining effective assistance of counsel claims. Effective assistance of counsel has been defined as follows: “so long as the evidence, the law, and the circumstances of a particular case, viewed in totality and as of the time of the representation, reveal that the attorney provided meaningful representation, the constitutional requirement will have been met.” See People v. Baldi, 54 N.Y.2d 137, 444 N.Y.S.2d 893 (1981). Moreover, a defendant must demonstrate the absence of strategic or other legitimate expectations for counsel’s failure to pursue a particular course of action. See People v. Garcia, 75 N.Y.2d 973, 556 N.Y.S.2d 505 (1990).

It is well-settled that, in order to establish ineffective assistance of counsel, defendant must demonstrate that his counsel’s performance was so deficient that his counsel was not functioning within the meaning of the Sixth Amendment to the United States Constitution, and that his counsel’s deficient performance prejudiced him. This is the federal standard known as the two-part Strickland test. See Strickland v. Washington, 466 U.S. 668 (1984). To establish the “prejudice” prong, defendant must show that a reasonable probability exists that, but for counsel’s unprofessional errors, the result of the trial would have been different. See id. Defendant has not met this burden. The defendant has failed to demonstrate the absence of strategic or other legitimate explanations for counsel’s actions.


Under New York law, the Court of Appeals has reiterated that the standard for determining whether a defendant received effective assistance of counsel as first articulated in People v. Baldi, *supra*. In People v. Benevento, 91 N.Y.2d 708, 674 N.Y.S.2d 629 (1998), the Court found that “effective assistance” varies depending upon the circumstances of the case and that a flexible standard to analyze ineffective assistance of counsel claims must be applied under the New York State Constitution. Specifically, the Benevento Court addressed the term “meaningful representation” and how it is defined. Meaningful representation does not mean a perfect trial and efforts of counsel should not be second-guessed with hindsight. See Benevento,

supra at 712. Thus, “a reviewing court must avoid confusing ‘true ineffectiveness with mere losing tactics and according undue significance to retrospective analysis.’” See Benevento, *supra* at 712, quoting, Baldi, *supra*.

Defendant has failed to demonstrate prejudice under the New York State test for ineffective assistance of counsel and has also failed to provide any objective evidence to support his claims under Federal Law. Defendant’s assertions are unsupported. Thus, having also addressed the merits in addition to addressing the procedural bars, no hearing is necessary and defendant’s claim of ineffective assistance of counsel is deemed meritless.

Accordingly, defendant’s motion is denied in its entirety.

Kew Gardens, New York
Dated: July 10, 2007



GREGORY L. LASAK
JUSTICE SUPREME COURT