

People v Houston

2007 NY Slip Op 32251(U)

June 25, 2007

Supreme Court, New York County

Docket Number: 0000381/2006

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-	:	<u>DECISION AND ORDER</u>
	:	Index No. 381/06
	:	
ED HOUSTON,	:	
Defendant.	:	
	x	

APPEARANCES:

For the People: Bridget G. Brennan
Special Narcotics Prosecutor
Office of the Special Narcotics Prosecutor
80 Centre Street
New York, New York 10013
By: Shelley Solomon
Assistant District Attorney
Of Counsel

For the Defendant: Ed Houston
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Pro Se

WILLIAM A. WETZEL, J.:

The defendant was indicted by the Special Narcotics grand jury for three counts of Criminal Sale of a Controlled Substance in the Third Degree, in violation of Penal Law §220.39(1), and one count of Criminal Possession of a Controlled Substance in the Third Degree, in violation of Penal Law §220.16(1). On October 4, 2006, the case was sent to this court for trial, but the defendant elected to plead guilty to one count of Criminal Sale of a Controlled Substance in the Third Degree to cover all charges in the indictment. In exchange for his plea of

guilty, the defendant was promised a determinate term of 3 ½ years incarceration, to be followed by 1½ years of post-release supervision. The defendant was sentenced pursuant to that promise on October 23, 2006. The defendant now moves to vacate the judgment of conviction pursuant to CPL § 440.10. He alleges that defense counsel was ineffective because she allegedly failed to file relevant motions, and failed to provide him with documents relating to his case, including Brady and Rosario material. He also alleges a potpourri of procedural complaints, including a denial of his speedy trial rights, allegations that the grand jury proceeding was defective, and the assertion that his guilty plea was the product of duress. 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 1993 felony conviction for Criminal Sale of a Controlled Substance in the Third Degree, for which he was incarcerated from June 23, 1993 to November 26, 1997. The instant indictment accused the defendant of three separate counts of felony sale of drugs and one count of felony possession of drugs. Under these circumstances, the defendant faced significant jail time, a determinate sentence anywhere from 3 ½ to twelve years, which could have run consecutively on each sale count, if convicted on all counts of the indictment. He recognized, as well he should have, that the People's offer of 3 ½ years incarceration was extremely beneficial to him, and was an offer his attorney wisely advised him 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 October 4, 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 free 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 prior experience with the criminal justice system, including a guilty plea to a felony in 1993, 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.

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 a determinate sentence between 3 ½ and 12 years upon conviction on the top count, a class B felony, and the sentence could have run consecutively on each sale count. Therefore, the ultimate sentence of 3½ years incarceration, which the defendant actually received as a result of his plea, was far, far better than any sentence he was eligible to receive after trial. The fact that defense counsel was able to convince the People and the court to accept this plea bargain was evidence of her truly stellar performance on behalf of this defendant.

The Overarching Ineffective Assistance of Counsel Claim

Defendant asserts that his attorney was ineffective because she allegedly failed to file the appropriate pre-trial motions. Embedded within this claim are assertions that the Grand Jury proceedings were improper and his speedy trial rights were violated. For the reasons which follow, all of defendant's complaints are groundless.

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). In the context of a guilty plea, "the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." People v. McDonald, 1 NY3d 109, 114 (2003).

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 laughable.

Specifically, the record conclusively demonstrates that defense counsel filed a comprehensive pre-trial omnibus motion, which included a request for in camera inspection of the Grand Jury minutes. In a Decision and Order dated May 11, 2006, Judge Ambrecht granted the motion to inspect the Grand Jury minutes, as well as motions for Dunaway and Mapp hearings. Judge Ambrecht inspected the Grand Jury minutes and concluded that the Grand Jury proceedings were proper in all respects.

Furthermore, contrary to defendant's baseless assertions, his speedy trial rights were protected by his attorney's diligent filing of a CPL §30.30 motion, which was denied by Judge Ambrecht in a Decision and Order dated August 3, 2006. Judge Ambrecht found only 63 days properly chargeable to the People, well below the 90 days allotted by statute pursuant to CPL §30.30(2)(a).

Defendant's complaints about Brady and Rosario material are equally unavailing. His attorney made all appropriate written demands for Brady and Rosario material. The People responded that they had no Brady material. All Rosario material was provided to the defendant in court when the case was sent to this court for hearings and trial, and a list of that material was made part of the file as a court exhibit.


As the record shows, the defendant, properly advised by his attorney, made an informed decision and minimized his exposure to incarceration.

Defendant's remaining contentions have been examined and found to be without merit.

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: June 25, 2007
New York, NY



William A. Wetzel
HON. WILLIAM A. WETZEL