

People v Barrow

2007 NY Slip Op 32254(U)

July 12, 2007

Supreme Court, New York County

Docket Number: 0004332/1996

Judge: A. Kirke Bartley

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 94

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

DECISION and ORDER
Indictment No. 7417/95
4332/96

SHAWN BARROW,
Defendant.

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For the People: Mary Weisberger
Shawn Barrow, pro se

JUSTICE A. KIRKE BARTLEY:

Indictment No. 7417/95 charged the defendant with two counts of Criminal Sale of a Controlled Substance in the Third Degree, one count of Assault in the Second Degree, and one count of Escape in the First Degree. Indictment No. 4332/96, charged the defendant with Bail Jumping in the First Degree for failing to appear for a scheduled court appearance on Indictment No. 7417/95. On June 19, 1996, the defendant entered a guilty plea to one count of Criminal Sale of a Controlled Substance in the Third Degree to satisfy Indictment No. 7417/95 and Bail Jumping in the First Degree to satisfy Indictment No. 4332/96. He was promised sentences of four and one half to nine years and two to four years respectively, to run concurrently with one another. On July 24, 1996, the promised sentences were imposed.

Defendant has now moved pursuant to CPL §440.10 to vacate judgement and withdraw his guilty plea on the ground that he received ineffective assistance of counsel. Defendant contends that “to the best of his recollection” his attorney failed to advise him of his right to a jury trial, of the maximum possible sentences he was facing, of the fact that he was presumed innocent of the charges, as well as his right to appeal the sentences imposed upon him. Defendant

further alleges that his counsel coerced him to accept the plea offer by “threatening and voicing that he would receive an excessive amount of additional time” if he proceeded to trial. “failed to challenge the factual basis of the charge.” “failed to conduct a prompt investigation” of the case. failed to request information from the prosecution “that could have potentially vindicated him.” and file an appeal on his behalf.

Defendant has failed to submit an affirmation from either Russell Paisley, who initially represented defendant on Indictment No. 7417/95 or from Jeffrey Bernstein, who subsequently represented the defendant on both cases, including on the dates of plea and sentence. Nor did defendant offer any explanation for the absence of such an affirmation. The absence of any corroborating affidavit is particularly relevant here where a number of the defendant’s claims are contradicted by the court record.

For example, while defendant claimed that his attorney “coerced” and “threatened” to plead guilty, the minutes of June 19, 1996 (attached) demonstrate that he informed the Court that he was pleading guilty voluntarily and of his own free will, and in response to the specific question asking him whether “in order to get you to plead guilty, has anybody threatened you or coerced you in any way?” he answered “no.” As the People point out in their memorandum in opposition to the defendant’s motion, the minutes from defendant’s July 24, 1996 sentencing (attached) indicates that the defendant was also given the opportunity but declined to say anything on the date of sentence.

Furthermore, despite defendant’s claim that his attorney failed to request information from the prosecutor, the Court file contains an omnibus motion and a motion for disclosure submitted by Mr. Paisley, as well as the voluntary disclosure form filed by the People. And

contrary to defendant's claim that his attorney did not file a notice of appeal on his behalf, the defendant was granted leave to appeal and was assigned Daniel L. Greenberg as his appellate counsel. The Appellate Division agreed with appellate counsel's determination that there were no non-frivolous points which could be raised on appeal, and unanimously affirmed the judgement of the trial court (attached).

Finally, in his papers defendant states "to the best of his recollection" he was not advised of his right to a jury trial, despite the minutes of June 19, 1996 demonstrating that the Court specifically asked the defendant "[d]o you understand that when you plead guilty you give up your right to have a trial by jury on each of these cases," to which the defendant responded "yes." Without an attorney's affirmation, this court has only the allegations of a defendant who fails to recall at least some of the proceedings that took place eleven ago, and who has made a number of claims that are contradicted by the Court record. Absent an affirmation from his attorney corroborating any of his claims (or a plausible explanation for its absence), his moving papers are deficient. (*See People v. Morales*, 58 NY2d 1008 [1983]; *People v. Ozuna*, 7 NY3d 913 [2006]; *People v. Stewart*, 295 AD2d 249 [1D 2002]; *People v. Chen*, 293 AD2d 362 [1D 2002]; *People v. Johnson*, 292 AD2d 284 [1D 2002]; *People v. Taylor*, 211 AD2d 603 [1D 1995]).

In any event, defendant's claim of ineffective assistance of counsel lacks merit. The federal and New York state constitutional right to effective assistance of counsel requires that an attorney provide "meaningful representation" to a criminal defendant. (*See People v. Ford*, 86 NY2d 397 [1995]; *People v. Baldi*, 54 NY2d 137 [1981]). "In the context of a guilty plea, a defendant has been afforded meaningful representation when he or she receives an advantageous

plea and nothing in the record casts doubt on the apparent effectiveness of counsel.” (*People v. Ford*, 86 NY2d at 404). The record clearly indicates that defense counsel negotiated an advantageous plea for the defendant in this case. Defendant was indicted for two counts of Criminal Sale of a Controlled Substance in the Third Degree, Assault in the Second Degree, and Escape in the First Degree under Indictment No. 7417/95, and Bail Jumping in the First Degree under Indictment No. 4332/96. He was then offered, and pled guilty to, a single count of Criminal Sale of a Controlled Substance in the Third Degree to satisfy the first indictment and pled to the one charge in the second. As a result of that plea bargain, defendant was sentenced to the minimum on both charges to run concurrently with one another. Prior to accepting the negotiated plea, defendant in fact faced significantly lengthier sentences not only on the two charges he pled to, which also could have been run consecutively with one another, but he also could have received consecutive, and lengthy, sentences on any one of the other charges he faced under Indictment No. 7417/95 if he was convicted of those charges. Nothing in the court record otherwise casts doubt on the effectiveness of defendant’s attorney.

Accordingly, the motion is denied.

DATED: July 12, 2007

New York, NY



JUSTICE, SUPREME COURT

WOL. J. HENKE DEPT. OF COR.