

People v Brown

2007 NY Slip Op 32280(U)

June 22, 2007

Supreme Court, Kings County

Docket Number: 0009044/2003

Judge: Robert J. Collini

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SUPREME COURT: KINGS COUNTY
JUSTICE ROBERT J. COLLINI

Criminal Term, Part 29

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PEOPLE OF THE STATE OF NEW YORK

Plaintiff,

Dated: June 22, 2007

- against -

Ind. No. 9044-2003

GARVIN BROWN
Defendant.

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On May 4, 2005, the defendant, while represented by counsel, pled guilty to Manslaughter in the second degree (PL 125.15 [1]), over the strenuous objection of the assistant district attorney.¹ As part of his plea agreement with this court, the defendant signed a waiver of his right to appeal all non-jurisdictional issues (see *People v Seaberg*, 74 NY2d 1 [1989]). On June 17, 2005, this court sentenced the defendant to an indeterminate term of one to three years in state prison.

Despite waiving his right to appeal, the defendant filed a motion, *pro se*, pursuant to CPL 440.10 (1)(b), (c) and (h), seeking to vacate the judgment entered against him. That motion was denied, in a written decision by this court (*People v Brown*, 11 Misc3d 1053 [A] [Sup Ct Kings Cty 2005]).

Defendant then moved, *pro se*, pursuant to CPL 390.50, for a copy of his pre-sentence report, in order to assist him in administratively appealing his denial of parole. That motion was granted, in an unpublished written decision of this court, dated June 20, 2006.

¹The defendant was also indicted for Vehicular manslaughter in the second degree (PL 125.12), Criminally negligent homicide (PL 125.10), Reckless endangerment in the second degree (PL 120.20) and numerous VTL violations.

Defendant again moves, *pro se*, under CPL 440.10 (1)(g) and (h), to vacate judgment. These subsections are premised upon “newly discovered evidence” and judgments obtained “in violation of a right of the defendant under the constitution of this state or of the United States.”

The defendant claims that his pre-sentence report inaccurately states he did not have a co-defendant, even though the defendant’s case was prosecuted under the belief that another individual was also being charged in connection with the accident that resulted in the death of the victim.² The defendant claims this “newly discovered evidence” requires his judgment be vacated as a violation of his “due process” rights. However, there is a section in that same pre-sentence report labeled “status of co-defendant or accomplices” which clearly describes and names the other individual who was separately indicted, convicted and sentenced for his conduct in connection with the same victim.

Defendant’s motion is summarily denied, pursuant to CPL 440.30 (4)(a), since CPL 440.10 (1)(g) applies only to “new evidence [that] has been discovered since the entry of judgment based upon a verdict of guilty after trial, which could not have been produced by the defendant at the trial even with due diligence...”³ The “newly discovered evidence” claim only applies if the defendant was convicted after trial and does not apply if he has admitted his guilt in order to minimize his potential sentence.

Even if the defendant’s claim had some factual merit, or relevance, the defendant knowingly, voluntarily and intelligently entered into a plea agreement and the concomitant waiver of his right to appeal all aspects of the case. Accordingly, the defendant has waived all non-jurisdictional defects in the proceedings (*People v Dockery*, 1 AD3d 528, 528 [2nd Dept 2003], *lv denied* 1 NY3d 627). Obviously, what the Probation Department writes as part of their pre-sentence report to the court is not a jurisdictional impediment to prosecution that survives a plea of guilty.

As our Court of Appeals recently reiterated:

²As the result of this defendant’s frivolous use of his pre-sentence report, this court will be more circumspect about granting other prisoners’ boilerplate requests for copies of their pre-sentence reports.

³Defendant’s motion could also be summarily denied pursuant to CPL 440.10 (2)(c).

[A] plea of guilty ... marks the end of a criminal case, not a gateway to further litigation ... Generally, a defendant who admits guilt in open court “may not later seek review of claims relating to the deprivation of rights that took place before the plea was entered” ... Thus, under a guilty plea, a defendant waives specific rights attached to trial and forfeits “the right to review certain claims made prior to the plea.”

(*People v Parilla*, --- NY3d ---, [2007 N.Y. Slip Op. 05133])(*citations omitted*).

“In accepting a defendant’s waiver of the right to appeal, the trial court must at least satisfy itself on the record that the waiver complies with the procedural and integrity-of-process safeguards expressed in [judicial] precedents” (*People v Calvi*, 89 NY2d 868, 871 [1996]). “While there is no requirement that the trial court engage in any particular litany” (*People v Callahan*, 80 NY2d 273, 283 [1992]), “some judicial examination of the waiver itself with a manifestation expressed on the record, as may be appropriate, is necessary to show satisfaction of [judicial] protocols” (*Calvi*, 89 NY2d at 871; *People v Holman*, 89 NY2d 876, 878 [1996]).

The Court of Appeals has accepted waivers of the right to appeal, provided they are “voluntary knowing and intelligent [and provided] [t]he trial court determines that [the waiver] meets those requirements” (*Calvi*, 89 NY2d at 871; *see also Seaberg*, 74 NY2d at 11).

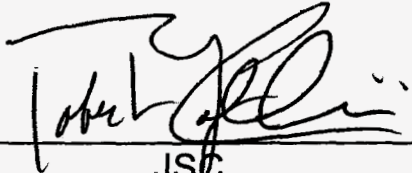
This court conducted an extensive plea allocution in this case. The court not only had a conversation with the defendant concerning the length of his sentence and what he was pleading guilty to, but it also advised the defendant of his waiver of his right to appeal his conviction and sentence or any other aspect of the case. The defendant advised the court that he was pleading guilty voluntarily and under his own free will and that no one had coerced or pressured him into pleading guilty. The defendant also stated that he was satisfied with the representation he had received from his attorney and that he was satisfied that entering into this plea was in his best interests.

The court notes that the defendant never moved to withdraw his plea of guilty prior to sentence. Had he made such a motion, he would have preserved a claim that his plea was not knowingly, voluntarily and intelligently made (*People v Lopez*, 71 NY2d 662 [1988]; *People v Hull*, 300

AD2d 411 [2nd Dept 2002]; *People v Harris*, 291 AD2d 458 [2nd Dept 2002], *lv denied* 98 NY2d 637; *People v Nieves*, 289 AD2d 342 [2nd Dept 2001], *lv denied* 97 NY2d 732).

Accordingly, defendant's motion to vacate the judgment entered against him is denied (CPL 440.30 [2] and [4][a]).

This constitutes the decision, opinion and order of the court (CPL 440.30 [7]).



JSC

Dated: June 22, 2007
Brooklyn, New York

HON. ROBERT J. COLLINI
JUSTICE COURT OF CLAIMS

ENTERED
JUL - 6 2007
NANCY T. SUNSHINE
COUNTY CLERK