

People v Wright

2007 NY Slip Op 32451(U)

July 12, 2007

Supreme Court, New York County

Docket Number: 0001396/1978

Judge: Edward J. McLaughlin

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SUPREME COURT OF THE STATE OF NEW YORK
 NEW YORK COUNTY: CRIMINAL TERM: PART 93

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 THE PEOPLE OF THE STATE OF NEW YORK,

— against —

CHARLES WRIGHT,

Defendant.

**Decision On Motion
 To Reargue**

Ind. No. 1396/78

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 EDWARD J. McLAUGHLIN, J.:

INTRODUCTION

Defendant moves to reargue this court's decision denying his motion for resentencing. In that motion, defendant argued that his sentence was invalid because he had appeared *pro se* at his 1980 sentencing and was not given a copy of the presentence report. This court grants reargument, but does not change its original decision.

BACKGROUND

In his original motion, defendant attached a copy of the presentence report prepared in this case. Defendant had received that report in 1994 after the trial court granted his motion for a copy of his presentence report.

The report attached to defendant's motion actually contains three different reports: one main report and two supplementary reports. The main report was prepared after defendant had pleaded guilty on April 6, 1979, and included the results of an interview with the defendant. The main report did not include a statement by the crime victim, who was unavailable to be interviewed, and the court therefore

ordered that a supplementary report be prepared. The Department of Probation interviewed the victim and prepared a supplementary report that summarized the results of that interview. Ultimately, the court refused to impose the promised sentence, and defendant withdrew his guilty plea and proceeded to trial.

On October 11, 1979, a jury found defendant guilty of assault in the first degree. The Department of Probation prepared another supplementary presentence report to update the court on any new information that might be relevant for sentencing. The Department of Probation reinterviewed defendant and includes the results of that reinterview in the second supplementary report. After the second supplementary report was prepared, the court decided not to impose sentence on the scheduled sentencing date. Instead, the court ordered a persistent felony offender hearing. After the hearing, the court adjudicated defendant to be a persistent felony offender and sentenced him to an indeterminate prison term of from fifteen years to life (*see People v Wright*, 104 Misc2d 911 [Sup Ct, NY County 1980]).

The District Attorney did file an answer to defendant's motion for resentencing. The answer is dated March 21, 2007, and was filed in Part 93 on March 22, 2007. After receiving defendant's motion to reargue, in which defendant alleged that he had not received a copy of that answer, this court sent defendant a copy of the District Attorney's answer and gave him an opportunity to submit a reply. Defendant has filed his reply.

Defendant's motion to reargue is based principally on three claims. First,

defendant claims that the presentence report he obtained in 1994 was incomplete and did not contain the report that was ordered for his trial conviction. Second, he argues that this court decided his motion under the amended version of CPL 390.50 rather than the version that existed at the time of his 1980 sentencing. Third, he argues that his motion should have been summarily granted because the prosecution's answer had assumed that his factual allegations were truthful.

LEGAL CONCLUSIONS

The presentence reports that were disclosed to defendant in 1994 include what he claims is missing — the presentence report ordered by the court for his October 11, 1979 conviction. Because the Department of Probation had already prepared a presentence report and a supplementary presentence report by the time of that trial, the presentence report order by the court for the October 11, 1979 conviction is the second supplementary presentence report. This is the report that defendant alleges “he has never seen.” Those three reports, which defendant has seen and which he submitted with his original motion for resentencing, constitute the presentence report prepared for the defendant's conviction in this case.

As defendant correctly notes, CPL 390.50 (2) (a) did not exist at the time of his sentencing. But the current version of the statute is the same in substance as the statute that existed when defendant was sentenced. The 1985 amendment redesignated the former 390.50 (2)¹ into CPL 390.50 (2) (a) and slightly altered the

¹ See former CPL 390.50 (2) (McKinney's Cons Laws of NY, Book 11A, CPL §§ 330 to 499, Cumulative Annual Pocket Part, 1979, at 40).

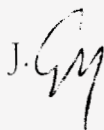
language of the statute, but that new language did not change the meaning of the statute. In other words, the 1985 amendment did not change the defendant's right to examine and copy the presentence report before sentencing. Therefore, the legal analysis that his court applied in its original decision applies equally to defendant's claim under the former statute.

Defendant is not entitled to have his motion granted summarily. Even if all of the defendant's factual allegations are true, no legal basis exists for granting the motion because defendant was not prejudiced by any alleged violation of CPL 390.50 (2). As this court held in its original decision, the record shows that the sentence imposed would have been the same even if defendant had been given an opportunity to review the presentence report on the day of sentencing. Under these circumstances, defendant has not established a legal basis for relief and his motion must, therefore, be summarily denied (*see* CPL 440.30 [4] [a]). The arguments in defendant's reply do not cause this court to alter its original decision.

Lastly, there was no violation of CPL 380.50. The sentence minutes show that defendant spoke extensively before sentence was imposed.

For the reasons stated, the motion for reargument is granted, but the court adheres to its original decision denying defendant's motion for resentencing.

Dated: July 12, 2007.



EDWARD J. M. M. M. M.