

People v Ruffin

2007 NY Slip Op 33873(U)

October 30, 2007

Supreme Court, Kings County

Docket Number: 0007683/1995

Judge: Abraham G. Gerges

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

[* 1]
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CRIMINAL TERM PART 17

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

By: Hon Abraham G. Gerges

Date: October 30, 2007

-against-

DECISION & ORDER

MILTON RUFFIN

Indictment No. 7683/1995

-----X
-----X

Defendant was convicted by jury verdict of attempted murder in the second degree and sentenced by this court on June 6, 1996 to a term of imprisonment of twelve and one-half to twenty-five years. His conviction arose out of an incident in the early morning hours of June 20, 1995, when a man returning home from work was attacked by two young men on bicycles who demanded the bag that he was carrying. Upon his refusal, the older man was shot and the bicyclists fled. Police officers on routine patrol nearby responded to the sound of the gun shots and when they reached the scene were immediately directed by the complainant to the two bicyclists a short distance away. With the police in pursuit the bicyclists separated. The officers chased defendant who discarded a handgun before he was apprehended. Defendant was immediately returned to the scene where the complainant identified him as the shooter.

Defendant's conviction was affirmed by the Appellate Division Second Department (*People v Ruffin*, 240 AD2d 519 [2d Dept 1987]) and leave to appeal to the Court of Appeals was denied (*People v Ruffin*, 90 NY2d 943 [1997]).

Defendant now moves pursuant to CPL §440.10 to vacate the judgement of conviction on the grounds of ineffective assistance of counsel. Specifically, defendant contends that his

attorney never fully advised him regarding the facts and issues of his case because his status as a security risk or "red card" restricted their discussions and left him unprepared to accept the plea offer. In a decision dated May 2, 2006, this court granted a hearing to resolve defendant's motion.

HEARING

A hearing was conducted on August 8 and 10, 2006 where defendant presented two witnesses, his trial attorney and himself. Prior to the presentation of testimony, defendant waived his attorney-client privilege concerning the discussions of plea offers.

Following his June arrest defendant was represented by the Legal Aid Society. On July 19, 1995, he was arraigned on the indictment and at that time the prosecution extended a plea offer of eight to sixteen years. Defendant discussed the charges and the offer with his first Legal Aid attorney who subsequently provided him with a packet of discovery materials that contained documents such as the police reports and the felony complaint. Defendant characterized their discussions as the "bare basics".

In August defendant was classified as a "red card" or high security risk because he was found to be in possession of some type of weapon. The "red card" designation placed severe restrictions on the way defendant was transported to and from the courthouse and on the conditions under which he was allowed to meet with his attorney. Defendant was isolated from most other prisoners in a basement holding area and was required to have both his hands and feet shackled with preventative mittens covering his hands. When in the basement holding cell defendant was not permitted to have private discussions or close contact with his attorney. Other inmates were always present and his attorney was required to stand back several feet from the

cell. Private discussions were impossible without a court order.

On December 19, 1995, a second Legal Aid attorney who would become defendant's trial attorney and the focus of this motion appeared on defendant's behalf for the first time. He confirmed the difficulties created by defendant's "red card" status, especially the concern over the lack of privacy during post-court appearance visits. Counsel's recollection of specific conversations with defendant was limited and obscured by the passage of time. He was left to rely on what would have been his general practice which would have been to not speak of substantive matters such as defendant's version of the case in front of other people. Under most circumstances his practice would have been to discuss the plea, the strength of the evidence and defendant's sentencing exposure if found guilty.

Counsel was nevertheless clear that he reconveyed the offer of eight to sixteen years to defendant in the restricted basement pen area. Because the offer was a matter of public record and "because there was no other way to convey it", privacy was secondary under the circumstances. Counsel considered the plea bargain offer to be "very generous" and told defendant "in no uncertain terms" and "in terms that were understandable" that the offer was "favorable".

Counsel was also able to make defendant aware that the immediacy of defendant's apprehension made the case against him very strong. According to defendant, even without in-depth discussions about the strengths and weaknesses of his case he understood that "there is a strong issue of identification and he [counsel] just harped on that, you know, that issue there. But I know it was ballistics and, you know, I was pointed out from the scene of the crime and things like that." In any event, defendant considered the offer of eight to sixteen years to be

unacceptable stating, “[t]hat was kind of too high. I was willing to plea but not to eight to sixteen.”

On April 15, 1996, after defendant’s trial commenced, the court reduced the plea offer to defendant to six to twelve years and signed an order so that defendant could meet privately with counsel. Defendant, now concerned about the strength of the evidence against him and about possibility of a guilty verdict, discussed the evidence with counsel. Until that time defendant, according to his testimony, had apparently focused on what he considered to be inconsistencies in the identification testimony or procedures that would lead to his acquittal. But with the completion of the *Wade* hearing, where the identification was found to be admissible, counsel made defendant aware that he was not confident that the inconsistencies perceived by defendant would prevail.

Defendant recognized that the ultimate decision to accept the new plea offer was left to him. His prior record of pleading to other felonies suggested that he had some experience with making such a decision. He nevertheless rejected the offer but later complained that “[w]ith a degree of persuasion I would have took the plea”.

CONCLUSIONS OF LAW

A defendant in a criminal proceeding has a constitutional right to the effective assistance of counsel (*Strickland v Washington*, 466 U.S. 668 [1984]; *People v Linares*, 2 NY3d 507 [2004]; see U.S. Const., 6th Amend.; NY Const.. Art. 1, §6). Under both federal and state law this fundamental right extends to representation at the pre-trial plea bargaining stage (see *Hill v Lockhart*, 474 U.S. 52 [1985]; *People v Ford*, 86 NY2d 397 [1995]).

Under the federal standard a defendant must overcome the strong presumption of

effectiveness by demonstrating that counsel's performance fell below an objective standard of reasonableness and but for counsel's unprofessional error the outcome of the proceeding would have been different (*Strickland v Washington* at 694). During plea negotiations counsel's effectiveness rests on whether his advice "was within the range of competence demanded of attorneys in criminal cases" enabling a defendant to make a "voluntary and intelligent choice among the alternative courses of action open" to him (*Hill v Lockhart* at 56).

In New York "[t]he core of the inquiry is whether defendant received 'meaningful representation.'" (*People v Benevento*, 91 NY2d 708, 712 [1998]). If counsel's performance reflects a reasonable and legitimate strategy under the circumstances and evidence presented, even if it is unsuccessful, it will not fall to the level of ineffective assistance. (*Id.*). "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." (*People v Baldi*, 54 NY2d 137, 147 [1981]).

Prejudice is a significant factor in assessing meaningful representation but under the State standard it is not an indispensable element of the inquiry (*People v Caban*, 5 NY3d 143, 155-156 [2005]). The focus here is on "the fairness of the process as a whole rather than its particular impact on the outcome of the case" (*People v Benevento* at 714). The acts or omissions of the attorney must be demonstrated to be sufficiently egregious to have prejudiced the defense or the defendant's right to a fair proceeding (*People v Hobot*, 84 NY2d 1021, 1024 [1994]; *People v Flores*, 84 NY2d 184, 187 [1994]).

"Meaningful representation by counsel includes the conveyance of accurate information regarding plea negotiations, including relaying all plea offers made by the prosecution." (*People*

v Rogers, 8 AD3d 888, 890 [3d Dept 2004]). To prevail on such a claim, a defendant has the burden of demonstrating “that a plea offer was made, that defense counsel failed to inform him of that offer, and that he would have been willing to accept the offer” (*People v Fernandez*, 5 NY3d 813, 814 [2005] quoting *People v Rogers* at 890-891; *People v Goldberg*, 33 AD3d 1018 [2d Dept 2006]).

In this instance defendant has failed to meet his burden of demonstrating counsel’s ineffectiveness under either standard. The record reflects that defendant was provided with accurate information regarding both plea offers. He was apprised of the offer of eight to sixteen years by his first attorney before his designation as a security risk. While his “red card” status undoubtedly made communication with his second attorney more complicated, there is little indication in the record that it was ultimately unfairly abridged. Counsel’s testimony about how and what he relayed to defendant when he repeated the first plea offer in the pens was realistic and credible. Defendant testified that he spoke to counsel by telephone and after most court appearances and that he was provided with discovery materials as they became available. Most importantly, it is clear that defendant was aware of the evidence against. He nevertheless rejected the first offer outright.

Had defendant had any illusions about the strength of the People’s case before proceeding to trial, they should well have been dispelled by the testimony of the arresting officer at the combined *Mapp*, *Dunaway*, and *Wade* hearing. With the immediate arrival of the police on the scene, because the complainant still had defendant and his accomplice in sight when they arrived, that defendant’s capture and the recovery of the gun that he had discarded unfolded so quickly, and because the defendant was identified with little passage of time, it should have been

apparent to defendant that he faced formidable odds at trial. The hearing also confirmed the factors that defendant had claimed that counsel had “harped on” repeatedly.

When defendant was presented with the revised plea offer of six to twelve years by the court, he was in a position to properly evaluate it. Special provisions were made to provide him with the privacy that he had asserted that had been lacking. He testified that under such conditions he was able to discuss the merits of the case and merits of accepting the offer. Again defendant rejected the opportunity to plead guilty.

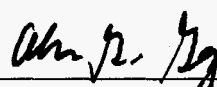
Upon informing defendant of this final plea offer, counsel then met his obligation to provide adequate advice based on his experience and knowledge of the facts and the law. Adequate advice in this context requires counsel to “usually inform the defendant of the strengths and weakness of the case against him, as well as the alternative sentences to which he will most likely be exposed.” (*Purdy v United States*, 208 F3d 41, 45 [2d Cir. 2000]). It is “unwise” to establish a “per se rule that defense counsel must always expressly advise the defendant to take a plea offer.” (*Id.* at 48). It is sufficient that counsel inform his client “fully of the strength of the government’s case against him, together with the nature of the government’s plea offer, without specifically advising [defendant] to take a plea.” (*Id.*). Counsel must provide defendant with professional advice while allowing him to make the ultimate decision whether to plead guilty (*Id.* at 44).

In this instance the hearing established that counsel provided such professional service to defendant. Counsel’s performance therefore did not fall below a standard of reasonableness and defendant received meaningful representation.

Accordingly, defendant’s motion is denied.

This decision shall constitute the order of the court.

ENTER:


ABRAHAM G. GERGES

J.S.C.

HON. ABRAHAM G. GERGES
J.S.C.

ENTERED
NOV - 7 2007
NANCY T. SUNSHINE
COUNTY CLERK