

People v Williams

2008 NY Slip Op 31990(U)

April 22, 2008

Supreme Court, Kings County

Docket Number: 0015319/1996

Judge: Jill Konviser

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM, PART 26

-----X	
THE PEOPLE OF THE STATE OF NEW YORK	:
	:
	:
-against-	:
	:
	:
TYRONE WILLIAMS, a/k/a	:
JAMES L. WOODS,	:
	:
	:
Defendant.	:
-----X	

DECISION AND ORDER
IND. No. 15319/96

JILL KONVISER, JUSTICE:

On March 19, 2007, the defendant pleaded guilty to criminal possession of a weapon in the fourth degree with the understanding that he would be sentenced to four months in jail. On that same date, after the defendant waived his right to receive a pre-sentence report, the promised sentence was imposed. The defendant has now filed a pro se motion to vacate the judgment of conviction under C.P.L. §441.10 on the grounds that his guilty plea was involuntary and that his prosecution was barred by the applicable statute of limitations. For the reasons that follow, the defendant's motion to vacate the judgment is denied in its entirety without a hearing.

Procedural History

On December 8, 1996, the defendant appeared with counsel in Kings County Criminal Court and was arraigned on a felony complaint in which he was charged with various weapons related offenses. These offenses related to the defendant's conduct that occurred on December 7, 1996. On January 30, 1997, the defendant was charged under indictment 15319/96 with criminal possession of a weapon in the second degree, criminal

possession of a weapon in the third degree, criminal possession of a weapon in the fourth degree and resisting arrest.

The defendant, however, who had been released on his own recognizance and was aware that he was required to be present in criminal court on January 23, 1997, failed to appear on that date. As a result, a warrant was issued for his arrest. The defendant did not return to court until October 25, 2006, almost nine years later.¹

On January 4, 2007, the defendant filed a pro se motion for dismissal pursuant to Criminal Procedure Law §30.30(1)(a) and for release pursuant to C.P.L. §30.30(2)(a). The People opposed the defendant's motion. On March 1, 2007, the defendant's motion to dismiss and his motion for release was denied.

On March 19, 2007, the defendant, who had been permitted by a judge of coordinate jurisdiction to proceed pro se with the assistance of a legal advisor, pleaded guilty before this Court to criminal possession of a weapon in the fourth degree in exchange for a promised sentence of four months. The record shows that the defendant, who was present in court with his legal advisor at the time of the plea, informed this Court that he wished to plea guilty and that he understood the terms of the plea agreement. The defendant further stated that he was pleading guilty voluntarily, that he had not been forced or threatened into pleading guilty, and that he was pleading guilty because he was in fact guilty. He also stated that he understood that by pleading guilty he was giving up his right to a jury trial, to remain silent, to cross-examine witnesses and "raise any legal defenses that . . . [he] may have [had] in this case." Plea and Sentence Minutes at 6.

¹ The defendant's criminal history record, as prepared by the New York State Division of Criminal Justice Services, does not show that the defendant was in custody on another matter between January 23, 1997 and October 25, 2006.

The defendant then admitted to this Court that he knowingly and unlawfully possessed a firearm on December 7, 1996. Thereafter, the defendant was informed by this Court that he had a separate and independent right to appeal and that “anyone who pleads guilty or gets convicted after trial has that right[.]” Further, the Court informed the defendant that as a condition of the plea the People were requiring that he waive his right to appeal. The defendant then informed the Court that he was voluntarily waiving his right to appeal.

Discussion

The defendant appears to claim that his plea was involuntary and was the product of coercion and, therefore, should be vacated under C.P.L. §440.10. In support of this argument, the defendant states that he did not wish to plead guilty as he had a valid defense to the charges but that he did so only because “his attorney, the Assistant District Attorney, and the Court, recommended that I plead guilty.” Defendant’s Motion at 1.

The defendant’s unsubstantiated claims that his plea was involuntary and was the product of coercion are refuted by his acknowledgment, at the time of the plea, that he was pleading guilty voluntarily, that no one had forced him or threatened him to plead guilty and that by pleading guilty he was giving up any defenses to the charges. See People v. George Beasley, __ A.D.3d __, 853 N.Y.S.2d 917 (2d Dept. 2008); People v. Polite, 259 A.D.2d 566 (2d Dept.), lv. denied, 93 N.Y.2d 1025 (1999); People v. D’Orio, 210 A.D.2d 424, 425 (2d Dept. 1994), lv. denied, 85 N.Y.2d 972 (1995). As such, this Court finds that the defendant’s plea was given knowingly, intelligently, and voluntarily.

Moreover, the defendant’s motion to vacate the judgment of conviction on these grounds is denied without a hearing for the additional reason that he has failed to set forth

even a scintilla of proof to support his claim that his guilty plea was involuntary and was the product of coercion. C.P.L. §440.30(4)(d) (a motion to vacate the judgment under C.P.L. §440.10 may be denied without a hearing if “[a]n allegation of fact essential to support the motion . . . is made solely by the defendant and is unsupported by any other affidavit or evidence . . . [and] under these and all other circumstances attending the case, there is no reasonable possibility that such allegation is true.”); see People v. Session, 34 N.Y.2d 254, 255-56 (1974) People v. French, 292 A.D.2d 813 (4th Dept. 2002), lv. denied, 98 N.Y.2d 675 (2002); People v. McCaskell, 206 A.D.2d 547 (2d Dept.), lv. denied, 84 N.Y.2d 869 (1994).

Accordingly, the defendant’s motion to vacate the judgment of conviction on the ground that his plea was involuntary and was the product of coercion is denied without a hearing.

Equally without merit is the defendant’s claim that the judgment should be vacated on the ground that his prosecution in this case was barred by the applicable statute of limitations. See C.P.L. §30.10. The Court of Appeals has held that by pleading guilty, a defendant waives the right to assert a statute of limitations defense. See People v. Parilla, 8 N.Y.3d 654, 659 (2007). As the law is well settled that a guilty plea “marks the end of a criminal case, not a gateway to further litigation,” see People v. Hansen, 95 N.Y.2d 227, 230 (2000), and the defendant in this case expressly acknowledged that by pleading guilty he was giving up any defenses that he had to the charges, the motion to vacate the judgment of conviction on statute of limitations grounds is denied without a hearing.

Moreover, as the defendant has validly waived his right to appeal, see People v. Lopez, 6 N.Y.3d 248, 256 (2006), he cannot circumvent this waiver by raising his


challenge to the statute of limitations in a motion to vacate the judgment under C.P.L. §440.10 See People v. Cooks, 67 N.Y.2d 100, 103 (1986) (A motion to vacate a judgment of conviction cannot be “employed as a substitute for direct appeal[.]”); People v. Alexander, 256 A.D.2d 349 (2d Dept. 1998) (A defendant who waives his or her right to appeal “cannot use C.P.L. §440.10 as a substitute for an appeal[.]”) Accordingly, for this additional reason, the defendant’s motion to vacate the judgment based on an alleged violation of the statute of limitations is denied without a hearing.

Finally, the defendant’s motion to vacate the judgment based on an alleged violation of the statute of limitations is denied without a hearing as he has set forth nothing more than conclusory allegations to support his claim. C.P.L. §440.30(4)(d); People v. Session, 34 N.Y.2d at 255-56.

The defendant’s motion to vacate the judgment of conviction pursuant to C.P.L. §440.10 is denied in its entirety without a hearing.

This constitutes the Decision and Order of the Court. The Clerk of the Court is directed to mail copies of this Decision and Order to the defendant and to the Kings County District Attorney.

Dated: Brooklyn, New York
April 22, 2008



J.S.C.
HON. J. KONVISEFF

