

People v Britt

2009 NY Slip Op 31476(U)

March 25, 2009

Supreme Court, Kings County

Docket Number: 11759/95

Judge: Danny K. Chun

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CRIMINAL TERM PART 19

-----X
THE PEOPLE OF THE STATE OF NEW YORK :
 :
 -against- :
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 DON JUAN BRITT, :
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 :
 Defendant. :
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 :
-----X

MOTION TO VACATE
DECISION AND ORDER

IND. NO. 11759/95

DANNY K. CHUN, J.

Defendant moves to vacate his judgment of conviction pursuant to C.P.L. §§ 440.10(1)(h), 440.20 based on a claim that his constitutional rights were violated when the New York State Department of Correctional Services failed to protect him from his inmates' assault against him for testifying against a gang member in an unrelated trial. The People oppose the motion.

On February 17, 1995, defendant pled guilty to attempted robbery in an unrelated case. As part of the plea bargain, defendant testified against a gang member in a murder trial, and in exchange received a reduced sentence for his attempted robbery conviction. On July 18, 1995, defendant was released to parole supervision. However, on September 29, 1995, defendant was indicted again for attempted murder for stabbing an individual a month after his release. After a jury trial, defendant was convicted of attempted murder and sentenced to a prison term of twenty years to life at the Sing Sing Correctional Facility. Defendant moves to vacate that judgment in this motion.

Defendant claims that, during his incarceration, he was repeatedly assaulted by his inmates for testifying against the gang member in the unrelated murder trial. Defendant alleges that the Department of Correctional Services failed to protect him from the assault despite his repeated requests for protection, and that such failure constituted cruel and unusual punishment in violation of his constitutional rights under the Eighth Amendment.

On December 20, 2008, defendant was transferred from the Sing Sing Correctional Facility to the Assessment and Program Preparation Unit (“APPU”) in Clinton Correctional Facility, a special unit designed “[t]o provide a separate program for those inmates unable to function in general population for fear of verbal and physical confrontation with other inmates.” (People’s Br. Ex. 2, 3) Defendant still resides at APPU.

The court is without jurisdiction to entertain defendant’s claim, which asks the court to change his sentence based on the events that occurred after a lawful sentencing. See People v. Ekinici, 191 Misc.2d 510, 512-13 (Sup. Ct. Kings County 2002). There is no authority in the Criminal Procedure Law for the reduction of sentences after the entry of a judgment unless it was “unauthorized, illegally imposed or otherwise invalid as a matter of law.” See C.P.L. § 440.20(1); People v. Medvecky, 152 Misc.2d 283, 284 (Sup. Ct. Queens County 1991); see also People v. Cole, 1 Misc.3d 531, 534 (Sup. Ct. Kings County 2003), citing People v. Stevens, 91 N.Y.2d 270, 277 (1998) (court denied defendant’s 440.10 motion, holding that a lower court has no inherent power to set aside a guilty verdict, but is limited to those grounds enumerated by statute).

Defendant does not place in issue any error or misunderstanding at the time of the sentence execution or deprivation of any constitutional right, but relies on an existing set of circumstances beyond his control which took place during his incarceration. See Medvecky, 152 Misc.2d at 285. By electing to proceed under C.P.L. § 440.20(1), the focus of inquiry is on the sentence imposed by the court viewed under the circumstances as they existed on the sentencing date. See People v. Hilker, 134 Misc.2d 420, 422-23 (Tioga County Ct. 1987). Defendant’s constitutional claims are solely based on the circumstances that existed after the sentencing date, after defendant had been incarcerated, and thus is denied of any remedy under C.P.L. § 440.20(1) by his own selection.

Defendant's motion is also procedurally barred as the ground and issue raised upon here has been previously determined on the merits by this court. See C.P.L. §§ 440.10(3)(b), 440.20(3). On April 6, 2005, defendant filed a *pro se* motion with this court (Hall, J.) to set aside his sentence based on the same claims asserted here that the conditions of his imprisonment constituted cruel and unusual punishment in violation of his Eighth Amendment right. The court denied the motion, holding that, in determining whether the sentence was cruel and unusual, the court did not have the authority to consider events that had occurred after the sentencing date. See People v. Britt, No. 11759-95, 4 (Sup. Ct. Kings County 2005).

The court, nonetheless, considered the merits of defendant's claims by converting his motion to an application for a writ of habeas corpus pursuant to C.P.L.R. Article 70, and found them meritless. The court analyzed defendant's constitutional claims in light of (1) the gravity of the offense and its effect on the society; (2) comparison of defendant's acts with other charged participants; and (3) defendant's personal history – three factors set forth in the Court of Appeals' decision in People v. Thompson, 83 N.Y.2d 477, 480 (1994). The court found that the statute as applied to defendant did not constitute cruel and unusual punishment. See Britt, No. 11759-95 at 5-7.

The court must also deny defendant's motion to vacate judgment pursuant to C.P.L. § 440.10(1)(h) as the ground or issue raised relates solely to the validity of the sentence, not to the validity of the conviction. See C.P.L. § 440.10(2)(d); People v. Ekinici, 191 Misc.2d at 512.

In any event, the court finds defendant's claims without merit. Defendant has already been provided adequate remedy in his civil action. See Britt v. Dep't of Corrections, 2004 WL 868371 (S.D.N.Y. 2004). In April 2003, defendant, through counsel, brought a civil suit in the United States District Court for the Southern District of New York against the Commissioner of the New York

Department of Correctional Services and other related entities for his inmates' assault against him. Defendant claimed, among other things, that the prison authorities violated his civil rights and Eighth Amendment right to be free from cruel and unusual punishment. After a jury trial, defendant was awarded \$150,000 in compensatory damages and \$7.5 million in punitive damages. In 2008, instead of proceeding to a retrial on the issue of damages, the parties reached a settlement in the amount of \$325,000. The fact that defendant was awarded a significant amount in his civil lawsuit shows that he has already been compensated for the alleged damages he had suffered from his inmates' assault.

Moreover, having been transferred to the APPU, defendant is no longer exposed to the alleged risk of being assaulted by his inmates. APPU is a correctional facility specifically designed to serve a prisoner like defendant. Defendant does not allege that he is threatened or assaulted by his inmates at APPU.

The three United States Supreme Court cases cited by defendant are misplaced. They are merely civil lawsuits brought against prison guards and related personnel for violation of defendants' Eighth Amendment rights. They are not decisions on § 440.10(1)(h), 440.20 motions. By merely focusing on the Eighth Amendment violation, defendant misses the point that, in a §§ 440.10(1)(h), 440.20 motion, the issue is whether the judgment entered as of that date was illegal or unauthorized to warrant a vacatur, or whether the sentence was illegal at the time of sentencing to warrant a setting aside. Defendant's claims of constitutional violation are solely based on post-conviction, post-sentence incidents. In fact, defendant has already received his compensation in a civil lawsuit, amounting to \$325,000, and is no longer exposed to the risk of being assaulted by his inmates.

Wherefore, defendant's motion pursuant to C.P.L. §§ 440.10(1)(h), 440.20 is denied.

The foregoing constitutes the decision and order of the court.

Dated: Brooklyn, New York
March 25, 2009.



DANNY K. CHUN, J. S.C.

ENTERED
MAR 26 2009
NANCY T. SUNSHINE
COUNTY CLERK