

People v Williams

2009 NY Slip Op 32355(U)

October 9, 2009

Supreme Court, Kings County

Docket Number: 3734-99

Judge: Betsy Barros

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MEMORANDUM

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM, PART CV 76

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THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

DECISION AND ORDER

-against-

Indictment Number:
3734-99

PATRICK WILLIAMS,

Defendant.

-----X

For the Defendant
The law office of Gail A. Adams
by John L. Samson, Esq.
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For the Respondent
The office of Charles
Hynes Kings County
District Attorney
By Melissa J Feldman, Esq.
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The following papers numbered 1 through 13 were considered on the motion

Notice of Motion Affirmations Exhibits, 1, 2, 3, 4, 5, 6, & 7

Opposing affirmations, transcripts and memorandum of law 8, 9, 10, 11, 12, 13. (12&13 a birth certificate and transcript of grand jury minutes were delivered under seal)

By: **Betsy Barros, J.**

Defendant, moves pursuant to CPL § 440.10, to vacate the December 10, 1999 judgment claiming as follows:

1. Defense counsel was ineffective and deficient;
2. Defense counsel affirmatively misrepresented to Defendant the immigration consequences of his guilty plea;
3. Defense counsel's failure to warn Defendant that his rape conviction, as an offense of moral turpitude and an aggravated

felony, would mandate deportation;

4. But for the bad advice of defense counsel Defendant would have sought trial and been found not guilty.

BACKGROUND

On January 15, 1999, inside his residence at 125 East 32nd Street, Brooklyn, New York, the then thirty six (36) year old Defendant had sexual intercourse with a girl aged sixteen (16). On May 18, 1999, before a grand jury the Defendant testified to the aforementioned act of sexual intercourse. On October 14, 1999, the Defendant represented by counsel pleaded guilty to rape in the third degree (PL. §130.25 [2]). The Court fully allocuted the Defendant about his knowing, informed, willingness to plead guilty and the underlying facts of the crime. On December 10, 1999, based upon the guilty plea the Court sentenced the Defendant as promised, to an intermittent sentence, to wit, three months of weekend incarceration and five years of probation. The Defendant as part of the plea agreement waived his right to appeal and has never appealed. The Defendant has fully served his sentence, and based upon all the letters and documents attesting to his character, the Defendant has apparently been a fine parent, and member of the lay and religious communities. (See Exhibit D of Defendants notice of motion.)

DISCUSSION

In the instant matter, there is no basis in law to vacate the Defendant's guilty plea. Defendant's contention that he lacked, pursuant to New York law, meaningful counsel fails. See People v. Benevento, 91 NY2d 708,709 (1998); People v. Baldi, 54 N.Y.2d 137, 146-7 (1981). Given that the Defendant admitted that he had sexual intercourse with a minor before the grand jury, the Defendant's guilty plea in exchange for thirteen (13) weekends in jail, instead of facing a continuous jail sentence of up to four (4) years and the likelihood of immediate post release deportation, satisfies this Court that Defendant's counsel was effective and the criteria that he had meaningful representation is satisfied.¹

Likewise, Defendant's contention that had he known that his guilty plea would subject him to deportation, these ten years later, he would have chosen to go to trial is unpersuasive. Defendant's admission before the grand jury mentioned herein above would have guaranteed his conviction, exposed him to a significantly greater period of incarceration, followed by an

¹Likewise the contention that Defendant lacked meaningful counsel because the victim's birth certificate was not produced at the sentencing is belied by the fact the plea was conditioned upon the production of proof of the victim's age and this Court has no reason to believe that proof of age was not submitted to Defendant's counsel. Moreover, the People have since provided to the Court a copy of the complainant's birth certificate and the grand jury minutes which confirm her age at 16 at the time of the offense. In the grand jury minutes the Defendant admits to sexual intercourse with the under-aged complainant .

immediate deportation - a far worse consequence than the sentence imposed and the consequent ten year delay in deportation.

Lastly, Defendant's self serving assertion that he was never informed of the immigration consequences of his guilty plea is unpersuasive. Said contentions have been rebutted by the sworn affirmation of his then defense counsel Stuart D. Rubin, Esq. as well as by the record of his guilty plea. The affirmation of Stuart Rubin, Esq., dated June 8, 2009 (hereinafter Rubin affirmation) and the transcript of the Defendant's guilty plea (Plea Tr.7, October 14, 1999) confirm that defense counsel advised the Court that he had duly discussed the immigration consequences of said plea with his client. The Rubin affirmation provides a convincing account of the what occurred in this matter. The Defendant chose to plead guilty in exchange for a lighter sentence, avoided INS detection for ten (10) years², and thereby benefitted from his counsel's advise. Unfortunately for the Defendant, his problems with INS appear to have been precipitated upon his reentry into the country after attending a funeral for a family member in Jamaica.

Defendant proffers no credible evidence to support his contentions. Based upon all of the facts and circumstances

Be Rubin affirmation asserts that ten (10) years ago INS did not track the release of alien inmates who completed intermittent sentences, but only tracked and deported aliens who completed straight time prison sentences. The Court makes no finding on the validity of said assertion. In this matter however, it is clear that the Defendant avoided INS detection upon completing his sentence.

presented to this Court, there is no reasonable possibility that the defendant's allegations are true, and thus Defendant's motion does not rise to the level requiring a hearing, CPL §440.30(4)(d)(ii). Moreover, the parties requested that this Court decide this motion on submission, thereby waiving a hearing and oral argument.

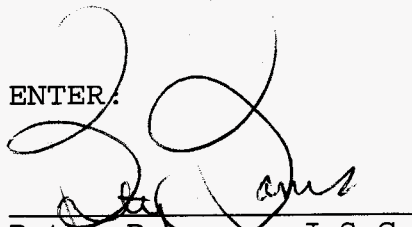
CONCLUSION

This Court is fully cognizant of the devastating impact deportation will have upon the Defendant's life and that of his young son and other family members. Moreover, after review of the full record, this Court is persuaded that the equities involved in this case weigh heavily against deportation. In the ten years since his conviction, the Defendant has, served his sentence, led a law abiding life, been gainfully employed, dutifully supported his family, and maintained strong community and family ties. Despite the equities involved, the Defendant has failed to establish a legal basis for vacatur of his guilty plea, and leave to plead guilty to a non-deportable offense.

Therefore, based upon all of the foregoing, the instant motion is denied in its entirety.

Dated: October 9, 2009
Brooklyn, NY

ENTER:


Betsy Barros, J.S.C.

**HON. BETSY BARROS
SUPREME COURT JUSTICE**