

People v Saunders

2009 NY Slip Op 33231(U)

November 20, 2009

Sup Court, Kings County

Docket Number: 6604-97

Judge: Betsy Barros

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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,

-against-

ROBERT SAUNDERS.

DECISION AND ORDER

Indictment No: 6604-97

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By: **Betsy Barros, J.:**

Approximately two years after moving *pro se* pursuant to CPL §440.20(1) defendant, once again moves *pro se*, to vacate his judgment, now claiming that his sentence was illegal because: 1) his due process rights were violated either because the statutes under which he was convicted described acts that were so vague “that it leaves the public uncertain as to the conduct it prohibits or leaves Judges and jurors free to decide without any legally fixed standards what is prohibited and what is not in each particular case”¹ and 2) his sentence was wrongfully set because the Judge used his prior youthful offender conviction to find him a violent predicate and sentenced him to the maximum indeterminate sentence under the statute then in effect.² In deciding this motion, the Court has considered the defendant’s motion papers, the People’s affirmation in opposition, the sentencing transcripts, and defendant’s affirmation in reply.

BACKGROUND

In the early morning of May 25, 1997 and armed with guns, the Defendant and his cohorts, entered via the kitchen window, the apartment occupied by Joe Mitchell, his friend Diane Hudgins,

¹ See Defendant’s notice of motion dated June 13, 2009 at page three (3) therein.

² Defendant’s argument that his youthful offender conviction was sealed and thus should not have been considered by this Court for purposes of sentencing is the exact basis for his previous CPL§ 440.10 motion.

her daughter Tanya Hudgins, and the latter's three children. Joe Mitchell, Diane Hudgins, and Tanya Hudgins were tied up and robbed in the presence of Tanya's three young children. The intruders stole money, jewelry, and a VCR. The defendant, whom Mr. Mitchell and the two women recognized as a neighbor, reportedly urged his accomplices to kill all of the victims. Claiming that they were in possession of the victims' photographs³ and would use these to locate and then harm them, the intruders warned the victims not to report the incident to the police.

On July 21, 1997, defendant was arraigned on Indictment No. 6604-97, which charged him with three counts of Menacing in the Second Degree (Penal Law § 120.14 [1]), Unlawful Imprisonment in the Second Degree (Penal Law § 135.05), Burglary in the First Degree (Penal Law § 140.30 [4]), Robbery in the First Degree (Penal Law § 160.15 [4]), Criminal Possession of a Weapon in the Fourth Degree (Penal Law § 265.01 [2]), and two counts of Grand Larceny in the Fourth Degree (Penal Law § 155.20 [1] and [5]).

Following a jury trial, the defendant was convicted of Burglary in the First Degree and three counts of Menacing. He was acquitted of Grand Larceny in the Fourth Degree. A mistrial was declared on the remaining two counts of Robbery in the First Degree after the jury failed to reach a verdict on those counts. On April 14, 1998, the defendant was sentenced to an indeterminate period of incarceration of ten to twenty years on the Burglary conviction and concurrent one-year terms of imprisonment on each of the Menacing offenses.

Claiming that he had been denied a public trial, that his attorney had been ineffective because of his attorney's failure to call alibi witnesses at trial, that the line-up procedure was suggestive, *and that his sentence was harsh and excessive*, the defendant unsuccessfully appealed his conviction

³The photographs were contained in the wallet of one of the women.

(*People v Saunders*, 306 AD2d 502 [2d Dept 2003]). The Second Department affirmed his conviction, finding that the lineup had not been unduly suggestive, that he had received effective assistance of counsel, and that his sentence had not been excessive. The defendant's application for leave to appeal to the Court of Appeals was denied (*People v Saunders*, 100 NY2d 645 [2003]).

The defendant next applied for a writ of error *coram nobis* to vacate his convictions on the ground of ineffective assistance of appellate counsel. This application was denied by the Second Department (*People v Saunders*, 16 AD3d 440 [2005]), as was his appeal to the Court of Appeals (*People v Saunders*, 4 NY3d 890 [2005]).

In another challenge to his conviction, the defendant sought to vacate his conviction pursuant to Criminal Procedure Law §440.10 on the bases of newly discovered evidence and ineffective assistance of counsel. By decision and order dated November 23, 2005, this Court denied said motion to vacate the judgment of conviction.

The defendant filed a pro-se supplemental petition for a writ of habeas corpus, which the Federal District Court, by decision dated May 30, 2007, denied.

The defendant moved thereafter to have his conviction vacated pursuant to CPL § 440.10 mentioned herein above. This Court denied said motion by decision and order dated February 21, 2008. There is considerable overlap between the motion resulting in this Court's decision and order dated February 21, 2008 and the instant CPL § 440.20 motion.

CPL §440.20

At the very outset it must be noted that this defendant: 1) filed an appeal of his conviction; and that 2) by decision and order dated February 22, 2008 this Court denied his previous

C.P.L. §440.20 motion which alleged that his sentence was unlawful because, among other reasons, the Court enhanced his sentence by considering the underlying bad acts of his youthful offender adjudication, and the Court had erroneously deemed him a predicate felon because of his youthful offender status.

This Court is statutorily authorized in its discretion to dismiss a CPL §440.20 motion which is essentially a re-argument of a prior CPL §440.20 motion. In the instant matter, defendant's current motion seeks to reargue the grounds of his last CPL § 440.20 motion to wit: this Court erred when it considered the underlying bad acts for which the defendant was adjudicated a youthful offender.

2. Notwithstanding the provisions of subdivision one, the court may deny such a motion when the ground or issue raised thereupon was previously determined on the merits upon a prior motion or proceeding in a court of this state, other than an appeal from the judgment, or upon prior motion or proceeding in a federal court, unless since the time of such determination there has been a retroactively effective change in the law controlling such issue. Despite such determination, however, the court in the interest of justice and for good cause shown, may in its discretion grant the motion if it is otherwise meritorious. (CPL § 440.20.3.)

The defendant proffers no reason for this Court to reconsider the points already made in his prior CPL § 440.20 motion. The prior motion resulted in a painstakingly precise thirteen page decision and order. The defendant offers no new argument, reasoning or law to demonstrate that this Court erred in its prior decision. At the sentencing hearing the defendant and his counsel freely discussed his youthful offender conviction, and although free to object to same being in the probation report, they never did so.

**DEFENDANT'S CLAIM THAT THE LAW
IS UNCONSTITUTIONALLY VAGUE FAILS**

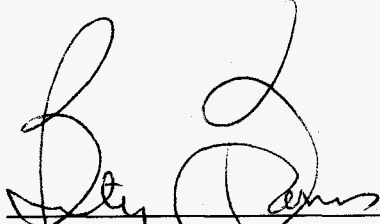
Contrary to defendants' contention, neither the Penal Law under which he was convicted nor the sentencing statutes under which he is incarcerated are unconstitutionally vague. [See defendants notice of motion at page three (3).] It is well-established that enactments of the legislature, like that of the other co-equal branches of government, are presumed to be constitutional and that it is the defendant's burden to demonstrate, beyond a reasonable doubt, that the statute is unconstitutional. (Cohen v State of New York, 94 NY2d 1 {1999}) Following a jury trial the defendant was convicted of burglary in the first degree (P.L. § 140.30 [4]) and three counts of Menacing in the Second Degree (P.L. § 120.14[1]). The defendant does not explain how the behaviors proscribed in the aforementioned penal code are vague. This Court's examination of the relevant Penal Law reveals nothing ambiguous or susceptible to conflicting interpretation about the legislative purpose or definition of the crimes under which the defendant was convicted.

Moreover, if the defendant is claiming that his indeterminate sentence is unconstitutionally vague, such claim likewise fails. New York's current sentencing laws, like that of most other state and federal sentencing statutes, have long allowed for the imposition of indeterminate sentences. An indeterminate sentence of imprisonment is defined, in relevant part, as a sentence of imprisonment containing a minimum period and maximum term of imprisonment. (See P.L.60.00 & 70.00) Under this sentencing scheme, the Board of Parole as the legal entity designated to supervise the defendant upon his release, is granted the requisite authority to assess an inmate's readiness for release and to fix an actual date, within the confines of the minimum and maximum term imposed. The defendant is currently awaiting this very determination by the Board of Parole.

This Court finds no merit in defendant's claim that the indeterminate sentence imposed upon him, for the crime of Burglary in the First Degree, is so vague or unclear so as to violate fundamental concepts of fairness and substantive due process.

For all of the foregoing reasons, the defendant's motion to vacate and/or modify his sentence is hereby denied in its entirety.

This constitutes the decision and order of this Court.



BETSY BARROS, J.S.C.

**HON. BETSY BARROS
SUPREME COURT JUSTICE**

Dated: November 20, 2009
Brooklyn, NY

ENTERED

JAN 14 2010

NANCY T. SUNSHINE
COUNTY CLERK