

People v Buffaloe

2010 NY Slip Op 31135(U)

January 11, 2010

Supreme Court, Kings County

Docket Number: Ind. No. 11007/06

Judge: Jill Konviser

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

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THE PEOPLE OF THE STATE OF NEW YORK,	:	
	:	
-against-	:	
	:	Ind. No. 11007/06
RUSSELL BUFFALOE,	:	
	:	
Defendant.	:	

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JILL KONVISER, JUSTICE:

On January 24, 2008, the defendant pleaded guilty before this Court to burglary in the second degree, Penal Law §140.25(2), in exchange for a promised determinate prison term of ten years with a five year period of post-release supervision to run concurrently with a seven year prison sentence he was serving on an unrelated crime. On February 7, 2008, the promised sentence was imposed. The defendant has now filed a pro se motion to vacate the judgment of conviction under Criminal Procedure Law §440.10 on the grounds that: (1) he did not plead guilty knowingly and voluntarily as his attorney "intimidated and threatened" him into entering such a plea by telling him that he would be imprisoned for life if he did not plead guilty; and, (2) counsel was ineffective for failing to bring to this Court's attention "pertinent facts and mitigating circumstances and mental illnesses." The People oppose the defendant's motion. For the reasons that follow, the defendant's

motion to vacate the judgment is denied without a hearing.¹

Background

On January 24, 2008, the defendant appeared before this Court and pleaded guilty to one count of burglary in the second degree in exchange for a promised sentence of ten years incarceration with a five year period of post-release supervision to run concurrently with a seven year prison term that he was serving on an unrelated case. The record shows that the defendant, after conferring with counsel, told this Court, under oath, that he wished to plead guilty to burglary in the second degree in exchange for the promised sentence, that he had had a chance to speak with his counsel about the plea and the case and that counsel had answered all of his questions satisfactorily. Plea minutes at 4-5.

Furthermore, the defendant informed this Court that no one had forced him or threatened him to plead guilty, that he was pleading guilty voluntarily and that he was pleading guilty because he was

1. On July 24, 2008, the defendant filed a motion to withdraw his guilty plea under C.P.L. §220.60 on the grounds that: (1) his guilty plea was the product of coercion and was not entered knowingly and voluntarily; and, (2) he was actually innocent of the crime to which he pleaded guilty. On September 26, 2008, the defendant's motion to withdraw his guilty plea was denied in its entirety without a hearing. This Court held that the defendant's motion was untimely, that his claim that the plea was the product of coercion and was not entered knowingly and voluntarily was belied by the record and that his bare and conclusory assertions of innocence were refuted by the plea colloquy. See People v. Russell Buffaloe, Ind. No. 11007/06 (Sup. Ct. Kings Co. Sept. 24, 2008) (Konviser, J.).

in fact guilty. In response to this Court's question regarding whether any promises had been made to him, the defendant stated that the police had made promises when he was at the police station at the time of his arrest, but the record shows that this Court clarified with the defendant that aside from the promised sentence of ten years along with a five year period of post-release supervision to run concurrently with a seven year prison term that he was serving on an unrelated case, no other promises had been made to him. Plea minutes at 5-6.

The Court: [M]y question is specific with respect to this sentence. In other words, what I'm willing to promise you in exchange for your plea is a ten year sentence along with five years post-release supervision to run at the same time with the seven years you are serving. Other than that promise with respect to sentence, has anyone made you any other promises regarding your sentence.

The Defendant: No.

The Court: Has anyone forced you or threatened you to get you to plead guilty?

The Defendant: No.

The Court: Are you pleading guilty voluntarily?

The Defendant: Yes.

The Court: Are you pleading guilty because you are in fact guilty, sir?

The Defendant: Yes.

Plea Minutes at 6.

Moreover the record shows that the defendant told this Court that he understood that by pleading guilty he was giving up his constitutional right to a jury trial, to remain silent, to cross-examine witnesses and to assert a defense to the charges. He further stated that he was giving up these rights voluntarily.

Plea Minutes at 5.

The defendant also told this Court that he understood that he was pleading guilty to a felony and, as such, if he were convicted of a future crime, this conviction "would serve to enhance any future sentence" that he would receive. Plea Minutes at 7. He also stated that he understood that guilty pleas have the same effect as convictions after trial. Plea Minutes at 6.

The defendant then admitted to this Court that on November 5, 2006, he committed the crime of burglary in the second degree. Thereafter, the record shows that the defendant waived his right to appeal.

The Motion Before the Court

i. The Defendant's Claim that Counsel Threatened and Intimidated him to Plead Guilty

The defendant's claim that counsel threatened and intimidated him to plead guilty is belied by the defendant's sworn statements made at the time of the plea: (1) that he was pleading guilty

voluntarily; (2) that no one had forced him or threatened him to plead guilty; and, (3) that he was pleading guilty because he was in fact guilty. As the defendant's claim that counsel threatened and coerced him to plea guilty is contradicted by the record, his motion to vacate the judgment of conviction on this ground is denied without a hearing. People v. Beasley, 50 A.D.3d 697 (2d Dept.), lv. denied, 10 N.Y.3d 932 (2008); People v. Gedin, 46 A.D.3d 701 (2d Dept. 2007), 10 N.Y.3d 840 (2008); People v. Lopez, 34 A.D.3d 599 (2d Dept. 2006); People v. Sayles, 17 A.D.3d 924 (3d Dept.), lv. denied, 5 N.Y.3d 794 (2005); People v. Robertson, 2 A.D.3d 756 (2d Dept. 2003), lv. denied, 2 N.Y.3d 745 (2004); People v. Telfair, 299 A.D.2d 429 (2d Dept. 2002), lv. denied, 99 N.Y.2d 620 (2003); People v. Murray, 245 A.D.2d 531 (2d Dept. 1997), lv. denied, 91 N.Y.2d 943 (1998).

ii. **The Defendant's Claim that Counsel was Ineffective for Failing to Inform this Court of "Pertinent Facts and Mitigating Circumstances and Mental Illnesses."**

The defendant claims that counsel was ineffective for failing to provide this Court with information regarding "pertinent facts and mitigating circumstances and mental illnesses." He has not provided this Court with any information regarding the pertinent facts, mitigating circumstances and mental illnesses that counsel allegedly failed to bring to this Court's attention. As the defendant's ineffective assistance of counsel claim is based wholly on unsubstantiated conclusory allegations, his motion to vacate the

judgment of conviction on this ground is denied without a hearing. People v. Waymon, 65 A.D.3d 708 (2d Dept. 2009); People v. Coleman, 37 A.D.3d 491 (2d Dept.), lv. denied, 9 N.Y.3d 864 (2007); People v. LaPella, 185 A.D.2d 861 (2d Dept. 1992), lv. denied, 81 N.Y.2d 842 (1993).

Conclusion

The defendant's motion to vacate the judgment of conviction under C.P.L. §440.10 is denied 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 at his place of incarceration and to the Kings County District Attorney.

Dated: Brooklyn, New York
January 11, 2010

HON. JILL KONVISER

J.S.C.