

**People v Haynes**

2010 NY Slip Op 31251(U)

April 1, 2010

Supreme Court, Kings County

Docket Number: 3424/99

Judge: Deborah A. Dowling

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**MEMORANDUM**

**SUPREME COURT : KINGS COUNTY**  
-----X  
**PEOPLE OF THE STATE OF NEW YORK,**

**(Criminal Term, Part 1)**

**By: DOWLING, J.**

**- against -**

**Dated: April 1, 2010**

**Indictment No. 3424/99; 9448/01**

**TITUS HAYNES,**  
**Defendant.**  
-----X

The defendant moves pursuant to Criminal Procedure Law (C.P.L.) §440.10 for an order vacating his judgment of conviction by plea entered on March 2, 2000. The defendant was charged in Indictment 3424/99 with Attempted Murder in the Second Degree (PL §110/125.25(1)), Attempted Assault in the Second Degree (PL §110/120.05(2)), Attempted Assault in the third Degree (PL §110/120.00(1)), Reckless Endangerment in the Second Degree (PL § 120.25), Reckless Endangerment in the Second Degree (PL §120.20), Assault in the Third Degree (PL §120.00(1)), Criminal Possession of a Weapon in the Second Degree (PL § 265.03(2)), Criminal Possession of a Weapon in Third Degree (PL §265.01(1)), and Criminal Possession of a Weapon in the Fourth Degree (PL §265.01(1)). The defendant ultimately plead guilty to Attempted Criminal Possession of Weapon in the Third Degree and was sentenced to one and a half years incarceration on April 13, 2000.

The defendant contends that this Court should vacate his conviction because he did not receive effective assistance of counsel during the course of his representation by defense

counsel. Specifically, the defendant argues that the his attorney failed to adequately advise of him of the fact that a period of post-release supervision would be administratively applied to his sentence. The defendant contends that his attorney's lack of knowledge impacted his decision to take the plea because his attorney failed to give him an accurate view of his potential exposure to incarceration. The defendant argues that the defense attorney's lack of knowledge rose to the level of ineffective assistance of counsel and this court should allow him to vacate his plea and proceed to trial.

The People have opposed the instant motion and submitted a cross-motion. For the reasons stated herein the defendant's motion and the People's cross-motion are denied.

In determining a defendant's motion on the asserted grounds of ineffective assistance of counsel, the defendant must establish the two prong test set forth in *Strickland v. Washington*, 466 US 668 (1984). Namely, the defendant must establish that the defense counsel's representation fell below an objective standard of reasonableness and there is a reasonable probability that, but for counsel's errors, the proceeding would have been different, *Strickland*, supra. The *Strickland* standard requires that any judicial scrutiny brought to bear upon defense counsel's performance must be highly deferential. The Court is required to make every effort to avoid the distorting effects of hindsight.

In the instant case, the defendant has failed to meet the two-prong test of *Strickland*. It should be noted that, in deciding the instant motion, this Court has afforded the defendant every opportunity to fully present any arguments and evidence the defendant

believed to be dispositive on this instant motion. However, the evidence submitted by the defendant does not establish ineffective assistance of counsel. The record reflects that the defendant in fact received meaningful representation from his counsel. Moreover, there is no evidence that the defendant was deprived of meaningful representation of counsel. In fact it appears that the defense counsel negotiated a favorable plea agreement on the defendant's behalf.

The defendant delayed in bringing this motion for approximately ten years after his conviction and the facts now existing does not support the defendant's argument that he received ineffective assistance of counsel. The defendant was facing significant felony jail time prior to accepting the offered plea and upon accepting the plea was only required to serve minimal jail time. The defendant's claim that he received sub par representation is not evident from the facts of this case or the record now existing.

A baseless claim that the defense counsel provided ineffective assistance of counsel will not sustain a motion to vacate a defendant's plea ten years after the sentence was imposed. The defendant was required to provide sufficient evidence to establish his claim and in this instance the defendant has failed to do so. The defendant's claims are a thinly veiled attempt to affect the period of incarceration for which the defendant is presently in jail. The defendant was arrested on an unrelated matter approximately less than three months after being released from jail for time served on indictment 3424/99. The defendant was indicted for that offense under indictment number 9448/2001 and the matter was tried before a jury,

wherein the defendant was convicted of Robbery in the First Degree (PL §160.15(2)).

In sentencing the defendant on his most recent conviction on May 6, 2003, the defendant was adjudicated as a predicate felon based upon his conviction by plea under indictment 3424/09. The defendant now seeks to vacate that conviction by plea ten years later simply because it does not serve his present interest. It is clear to this Court that the defendant's motivation in seeking to vacate his guilty plea from March 2, 2000 is so that he may invalidate his status as a predicate felon. However, a defendant is not entitled to vacate a guilty plea simply because that plea does not serve his interest when he is subsequently convicted of another unrelated crime.

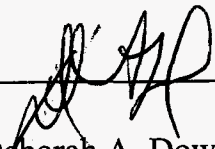
Further, there is no basis to grant the defendant's motion. The issue of post-release supervision with respect to the defendant's initial conviction by plea became a moot issue when the defendant was re-arrested less than three months after being released from prison and was convicted for the crimes charged under that arrest. The defendant's new arrest was unrelated to his status on post-release supervision. Therefore the issue of whether post-release supervision was administratively imposed is a nullity and does not provide a basis for the defendant to now withdraw his plea.

The issue of post-release supervision also does not have any bearing on the defendant's status as a predicate felon. When the defendant plead guilty under the initial indictment of 3424/99 that conviction served as a basis for the predicate category whether or not the defendant was placed on post-release supervision. The fact that post-release

supervision was imposed administratively would only mean that the period of post-release supervision would be deemed a nullity and would not serve as a basis for the defendant to withdraw his plea. Absent more pertinent evidence on trial counsel's actions, this Court finds that the defendant has failed to set forth any legal basis to withdraw his plea. Accordingly, the defendant's claim that defense counsel's representation was ineffective is without merit and the defendant's motion seeking to vacate his plea is denied.

The People's cross-motion seeking to re-sentence the defendant on indictment 9448-01 to included a period of post-release supervision is denied. (*See People v. Williams*, ---NY3d ---, 2010 N.Y. Slip Op. 01527).

This shall constitute the decision and order of this Court.

  
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Deborah A. Dowling, JSC

**ENTERED**  
**APR - 6 2010**  
**NANCY T. SUNSHINE**  
**COUNTY CLERK**