

People v Ebrahim

2010 NY Slip Op 31372(U)

May 24, 2010

County Court, Wayne County

Docket Number: 08-W21

Judge: Dennis M. Kehoe

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STATE OF NEW YORK
COUNTY COURT COUNTY OF WAYNE

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

MURTADA EBRAHIM,

Defendant.

DECISION
AND
ORDER

SCI # 08-W21

Appearances:
Roseann B. MacKechnie, Esq.
Deputy Solicitor General
Office of New York State Attorney General

Murtada Ebrahim, pro se
Defendant

The Defendant Murtada Ebrahim has moved pro se pursuant to CPL §§440.10 and 440.20 for an Order vacating his conviction after his plea to Grand Larceny in the Third Degree and Offering a False Instrument for Filing in the First Degree, arising from charges of Medicaid fraud, as set forth in the subject Superior Court Information. He was sentenced to an indeterminate term of two to six years on the charge of Grand Larceny in the Third Degree and an indeterminate term of one and one-third to four years on the charge of Offering a False Instrument for Filing in the First Degree, the terms to run concurrent with each other. The conditions were

memorialized in a written plea agreement, signed by the Defendant, his attorney, and counsel for the Attorney General's office, and approved by the Court. (The Defendant's corporation, M&M Transport, Inc., which provided ambulance services to Medical recipients, also entered a guilty plea to Grand Larceny in the Second Degree.) This motion was deemed submitted on the papers. (A prior motion pursuant to CPL §440.10 was previously filed by the Defendant, alleging essentially the same grounds as those asserted in the current motion; the first motion was denied on the record, but no order was entered.)

Prior to his sentencing, the Defendant moved by new counsel to withdraw his guilty plea, maintaining that the plea was not made knowingly, voluntarily and intelligently, in that he did not understand the contents of the plea agreement or the nature of the court proceedings, due to the fact that his primary language is Arabic. He also denied that legal concepts such as trial by jury and the presumption of innocence were explained to him. Extensive oral argument was held on the Defendant's motion, at which time an interpreter was present. This Court determined that, based on the credible evidence, the Defendant understood the nature of his plea and its consequences, and that his understanding of the English language was

adequate, and therefore denied the motion. A Notice of Appeal was filed by the Defendant, and the Fourth Department unanimously affirmed the Defendant's conviction. (See, People v Ebrahim, 67 AD3d 1388 (2009). A motion to reargue was denied by the Appellate Division, and the Court of Appeals subsequently denied reconsideration.

The Defendant now sets forth several grounds in support of his motion, specifically: 1) ineffective assistance of counsel; 2) the involuntariness of his guilty plea, due to his inability to adequately comprehend the English language; 3) lack of jurisdiction on the part of the Attorney General's Office to prosecute the case; 4) failure to hold a hearing on the amount of restitution (\$971,267.76); 5) interest of justice. There are also more generalized claims of duress and misrepresentation, false and/or newly discovered evidence, and other unspecified constitutional violations.

The Defendant maintains he is an "innocent person" and that he was forced to enter a plea of guilty to crimes which he did not commit, in derogation of constitutional rights which he did not understand. He maintains that he would never have agreed to the plea or the restitution, had he been represented by competent counsel. He further maintains that his understanding of the judicial process was further hampered by the fact that

English is his second language. Finally, he argues that the Superior Court Information was jurisdictionally defective under Executive Law §63(3).

However, the Attorney General's Office is correct in its position that the majority of the Plaintiff's arguments are record-based claims, in that they have either been raised on appeal and are therefore improperly raised on a motion of this nature under CPL §440.10(2)(a), or were not considered on appeal, due to the Defendant's unjustified failure to raise such issues (CPL §440.10 (2)(c)). The Court has reviewed the Defendant's papers and found no factual allegations in support of any claims regarding false or newly discovered evidence. The procedures required by Executive Law §63 were properly followed as shown by the documentary evidence submitted. Finally, there is no basis for dismissal of the charges in the interest of justice as there is no "compelling factor, consideration or circumstance" which clearly demonstrate that the Defendant's conviction is unjust.

The only other argument raised by the Defendant which merits any consideration is his claim that there were off-the-record conversations between himself and his first attorney, during which he was allegedly subjected to coercion by this lawyer to enter a plea. While it is true that a hearing may sometimes be necessary to resolve issues which are allegedly

not matters of record, in this instance, the Defendant's allegations may be resolved by a review of the record as a whole. There are extensive transcripts of the proceedings in this matter, including the detailed plea colloquy, the argument of the Defendant's motion to withdraw his plea, and the sentencing minutes. A copy of the plea agreement is also part of the record. The Court's colloquy with the Defendant was long and thorough and indicates his understanding of the proceedings. The Defendant also expressed his satisfaction with his legal representation several times on the record. No substantial factual issues were raised at the time of the lengthy oral argument of the Defendant's motion to withdraw his plea which would warrant a hearing on this issue. (See, e.g. People v Sayles, 17 AD3d 924 (3rd Dept, 2005). People v Brown, 23 AD3d 702 (3rd Dept, 2005)).

Therefore, the Defendant's motion to vacate his judgment of conviction is denied in its entirety.

This Decision constitutes the Order of the Court.

Dated: May 24, 2010
Lyons, New York



Honorable Dennis M. Kehoe
County Court Judge