

People v Reyes

2010 NY Slip Op 33417(U)

December 2, 2010

Supreme Court, Kings County

Docket Number: 6094/2005

Judge: John G. Ingram

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM, PART 21

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THE PEOPLE OF THE STATE OF NEW YORK, DECISION AND ORDER

-against-

Indictment No. 6094/2005

WILLIAM REYES,

Defendant.

-----X

INGRAM, J.

Defendant stands convicted, following a jury trial in Supreme Court, Kings County, of two counts of Robbery in the First Degree and one count of Robbery in the Third Degree. On August 17, 2006, This Court sentenced Defendant as a persistent violent felony offender to consecutive prison terms of twenty years to life on each count of Robbery in the First Degree and three and a half to seven years on the one count of Robbery in the Third Degree. (Ingram, J., at trial and sentence).

On or about November 23, 2007, Defendant appealed to the Appellate Division, alleging five claims: (1) the pretrial lineups were unduly suggestive; (2) Defendant was denied his right to counsel at the lineups; (3) the court's denial of Defendant's motion to sever the charges was an abuse of discretion; (4) the evidence was legally insufficient and the conviction was against the weight of the evidence; and (5) the consecutive sentences were cruel and unusual and unduly harsh and excessive.

The People filed a response on January 29, 2008.

On February 29, 2008, the Appellate Division granted Defendant's request to file a pro se supplemental brief. On September 3, 2008, Defendant filed his brief alleging three errors: (1) Defendant was denied his right to counsel at the lineups; (2) Defendant's Brady and Rosario rights

were violated when the People withheld evidence establishing that the complaining witness in one of the robberies had failed to identify Defendant in a show-up conducted shortly after the robbery; and (3) Defendant was denied effective assistance of counsel. The People filed a supplemental brief on October 30, 2008. The Appellate Division affirmed the judgment on March 17, 2009. People v. Reyes, 60 A.D.3d 873 (2d Dept. 2009). On June 4, 2009, the Court of Appeals denied leave to appeal. People v. Reyes, 12 N.Y.3d 920 (2009)(Read, J.).

In a *pro se* motion dated October 6, 2008, Defendant moved in Supreme Court, Kings County, to vacate the judgment pursuant to C.P.L. § 440.10. Defendant claimed that this Court lacked subject matter jurisdiction over one of the counts of Robbery in the First Degree and that the People withheld exculpatory evidence pertaining to the lineups. The People opposed Defendant's motion by papers dated November 25, 2008. This Court denied the motion by a decision and order dated February 3, 2009. The Appellate Division denied Defendant's application for leave to appeal on November 17, 2009.

Defendant next petitioned the United States District Court for the Eastern District of New York ("EDNY") for *habeas corpus* relief, raising numerous claims, including ineffective assistance of counsel, harsh and excessive sentence, and that the lineups were suggestive. That petition is still pending in the EDNY.

The Motion Before the Court

In a *pro se* motion dated August 23, 2010, Defendant now moves to vacate his judgment of conviction pursuant to C.P.L. § 440.10. Defendant claims that he was not arraigned on the indictment in accordance with C.P.L. § 210.15 and that the attorney who represented him at the

arraignment rendered ineffective assistance of counsel. The People argue that Defendant's present claim is barred procedurally from this Court's review and is entirely meritless. In deciding the instant motion, this Court considered Defendant's moving papers, the People's papers in opposition, Defendant's reply papers, the court file and applicable law.

The Court's Decision

Pursuant to C.P.L. § 440.10(2)(c) a motion to vacate a judgment of conviction must be denied when, although sufficient facts appear on the record to have permitted adequate review, the defendant unjustifiably failed to raise the issue on his direct appeal. The record presented sufficient facts from which Defendant could have raised his present claims, that the court did not provide him with an explanation of his rights or with a copy of the indictment. Since these issues could have been raised on direct appeal, it cannot properly be raised on the instant motion. C.P.L. § 440.10(2)(c)

Furthermore, all of Defendant's claims, including Defendant's claim of ineffective assistance of counsel, are procedurally barred by C.P.L. § 440.10(3)(c). C.P.L. § 440.10(3)(c) authorizes the Court to deny a 440.10 motion when "upon a previous motion made pursuant to this section, the defendant was in a position adequately to raise the ground or issue underlying the present motion, but did not do so." See People v. Cochrane, 27 A.D.3d 659 (2d Dept. 2006); People v. Jossiah, 2 A.D.3d 877 (2d Dept. 2003), lv denied, 2 N.Y.3d 742 (2004). Since this issue could have been raised in Defendant's previous 440.10 motion, the Court denies Defendant's claim.

Even if this Court were to determine Defendant's claim that his arraignment was in violation of his due process, it still would deny Defendant's claim. CPL Section 210.15(1) provides that "[u]pon the defendant's arraignment before a superior court upon an indictment, the court must

immediately inform him, or cause him to be informed in its presence, of the charges against him, and the district attorney must cause him to be furnished with a copy of the indictment.” The presumption of regularity permits the conclusion that Defendant was provided with a copy of the indictment, especially since the records of the Court indicate Defendant was represented by counsel at arraignment and that the People served and filed a copy of the indictment. See People v. Weatherly, 246 A.D.2d 340 (1st Dept. 1999). It is clear, based on the transcripts and records, that the indictment was served upon Defendant through his counsel and it informed him of the crimes with which he was charged and did so with sufficient clarity so as to allow him to prepare for trial. This is evident from the fact that there was never any objections made by Defendant during the pendency of the case, but rather, defense counsel accepted discovery material from the prosecution and filed a severance motion in which he cited the indictment. In addition, Defendant has failed to show any actual prejudice, which must be shown before dismissal of an indictment will be granted on the ground that a defendant has been denied due process of law. People v. Singer, 44 N.Y.2d 241, 252 (1978).

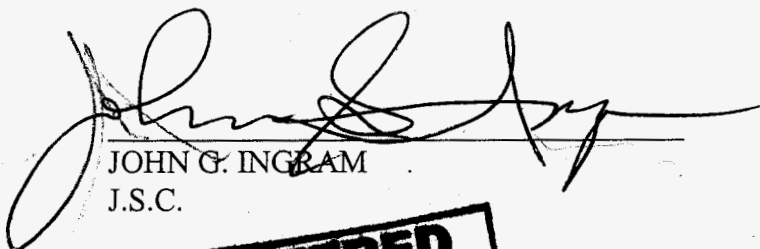
Defendant also claims that the arraignment court failed to inform him of his rights. As the People stated in their motion, the arraignment court must inform a defendant of his right to counsel at the arraignment if he has no counsel. See C.P.L. 210.15(3). Since Defendant was represented by counsel at his arraignment, it was unnecessary for the Court to inform Defendant about his rights pertaining to having counsel representing him.

In addition, Defendant’s claim that his counsel at arraignment was ineffective is without merit. Defendant has not demonstrated that defective counsel committed any errors during his arraignment that would warrant finding defense counsel ineffective.

Accordingly, Defendant's motion is denied in its entirety.

This opinion constitutes the Decision and Order of this Court.

Dated: December 2, 2010
Brooklyn, New York


JOHN G. INGRAM
J.S.C.

ENTERED
DEC 6 - 2010
NANCY T. SUNSHINE
COUNTY CLERK