

People v Edwards

2010 NY Slip Op 33698(U)

June 23, 2010

Supreme Court, Kings County

Docket Number: 1384/2008

Judge: Patricia DiMango

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, CRIMINAL TERM: PART PD-85

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 THE PEOPLE OF THE STATE OF NEW YORK :
 :
 : DECISION AND ORDER
 :
 -against- : Indictment Nos. 1384/2008
 :
 JUAN EDWARDS, :
 :
 Defendant. :
 -----X

HON. PATRICIA M. Di MANGO:

The defendant has moved for an order, pursuant to CPL §§ 440.10 and 440.20, vacating the sentence imposed under the captioned indictment upon his plea of guilty, and the defendant seeks to have same replaced by a youthful offender adjudication, or to be granted other appropriate relief. The People have opposed the application in all respects.

In determining this motion, the court has read the papers submitted by each side in support of and in opposition to the motion, together with annexed exhibits, and has also reviewed the official court file. As herein discussed, the court determines that the motion is denied, and the court has declined to hear oral argument in this matter.

The defendant originally stood charged with Attempted Robbery in the First, Second and Third Degrees, Assault in the Second and Third Degrees, Criminal Possession of a Weapon in the Fourth Degree, and Attempted Petit Larceny in connection with an incident which occurred on February 9, 2008. According to the People and the allegations contained in the Felony Complaint, the defendant had snatched a T-Mobile Sidekick cellular phone from the victim's hand, and when the victim grabbed it back, the defendant punched him in the face and also attempted to shock him in the face with a stun gun. It was further alleged that the victim was, in fact, shocked in the stomach, waist, back and hands by the defendant's stun gun.

The defendant was arraigned upon the indictment on March 12, 2008, and, at that time the defense indicated that the defendant was interested in accepting a plea offer with a Youthful Offender adjudication. Thereafter, on April 23, 2008, the 17-year-old defendant accepted an offer to plead guilty to the offense of Attempted Robbery in the Third Degree in full satisfaction of the instant indictment, in exchange for a promised sentence of one year's incarceration. However, no promises were given with regard to a Youthful Offender (Y.O.) adjudication. Rather, the court noted that the defendant was Y.O. eligible and the

court indicated that it would consider giving Mr. Edwards Y.O. treatment, but made no promise as to that. Thus, the court advised the defendant that if he were not to be granted Y.O. in this case, upon a future felony conviction he would be a predicate felon and would face mandatory imprisonment Upstate. Further, given that the defendant was not a United States citizen, the court also cautioned the defendant during the plea proceedings that he would be deported due to this conviction. The defendant indicated his understanding of these cautions and conditions and did enter a plea of guilty to the offense of Attempted Robbery in the Third Degree, freely and voluntarily admitting that he had attempted to forcibly steal a cell phone from the complainant.

On June 25, 2008, the defendant came back before the court for the imposition of sentence. Counsel for the defendant brought to the court's attention letters which had been written on behalf of the defendant. The court stated that it had read all of the submitted letters, the Probation Report, and the defendant's school reports and transcripts, and noted that "the only open issue was whether or not [the court] would give [the defendant] youthful offender treatment." Upon the court's review of all of the aforementioned and consideration of the manner in which the underlying crime had been committed, the court rendered its finding that the defendant was not a Youthful Offender. The defendant was then sentenced to one year in jail. At no point during these proceedings did Edwards seek to take back his plea or raise any impediment to sentence being imposed.

Thereafter, the defendant completed his sentence and was subsequently taken into custody by Immigration authorities, who commenced deportation proceedings against him. It is against this backdrop that the defendant has brought the instant motion, seeking to have his sentence vacated and replaced by a Y.O. adjudication. In essence, the defendant is requesting that the court vacate his judgment of conviction and replace it with a Y.O. adjudication in the interest of justice in order to avoid¹ deportation.

In his supporting affirmation, defense counsel asks that the court, as a matter of judicial discretion, "vacate the sentence because there are compelling factors which, after consideration, would result in an injustice if not vacated." Counsel avers that compelling circumstances exist for this relief, specifically, that the defendant's mother suffers from HIV/AIDS, has an atrial septal defect in her heart, is hearing-impaired, and suffers from extreme fatigue, and that the defendant is the only person who cares for her and her two-

¹ The court notes that when this motion was initially made, the defendant had been taken into custody by ICE in contemplation of deportation, but he was still in the United States. However, according to the parties, the defendant was subsequently actually deported. Nevertheless, as discussed, *infra*, the defense opines that Mr. Edwards' deportation does not render his motion academic.

year-old daughter and supports them. Counsel describes the defendant as a "young man with no previous criminal record [who] was hopeful of receiving a YO," and that he needs to receive a YO adjudication now so that he may continue to care for his mother. The defense asserts that the defendant will have no other contacts with the criminal justice system and opines that granting him a Y.O. adjudication will not affect the welfare or safety of the community, whereas to deny same would cause him "irreparable harm in that he will be unable to support and take care of his mother."

Among the items attached to the moving papers were various letters attesting to the defendant's mother's medical condition and to the defendant's positive change in behavior and improvement in school, as well as to his [good] character. Additionally, two authors implored the court to take into consideration the effect Mr. Edward's deportation would have on his family in the United States and the extreme hardship it would cause to them all.

While the People initially delayed in submitting a written response to this application because they were considering it and were unsure as to whether they would oppose it, ultimately, the People did oppose the motion on several grounds. Firstly, having discovered that the defendant had already been deported in the interim, the People contend that the motion has been rendered moot. Additionally, the People maintain that there is no legal basis for granting the relief requested, however unfortunate the situation might be.

The defense has replied to the People's papers, asserting that an appellate court would still have jurisdiction over a matter involving a defendant who had been involuntarily deported. Thus, the defense maintains that the motion has not been mooted, notwithstanding the defendant's recent deportation. Furthermore, according to the representations of an immigration attorney consulted regarding this matter (whose letter is attached to the defendant's reply papers), since the defendant is married to a United States citizen, if he were to be accorded a Y.O. adjudication and his conviction were vacated, he would then be eligible to apply for lawful permanent resident status and be able to return to the U.S.

Discussion

The court finds that it must agree with the People that, however unfortunate the situation may be for the defendant's family, there is no legal basis for the court to convert the defendant's conviction to a Youthful Offender adjudication.

The defendant did not enter his plea upon a promise of Y.O. treatment, and, indeed, he does not so claim. Rather, he received a reduced count and a lenient sentence for a

violent crime; and he was considered for Y.O. treatment, even though the court ultimately determined that it was not appropriate to grant the defendant Y.O. status for such a serious case. Thus, the defendant received what was promised to him: a lenient sentence in recognition of his background, namely the lack of a prior conviction for a crime, and the court's consideration of Y.O. treatment. Furthermore, the defendant had been warned that he faced deportation. Nevertheless, he agreed to accept the plea offer and forego a trial.

Now, the defendant wishes to avoid the consequences of his conviction, and accordingly, has brought this motion, made pursuant to CPL 440.10 and 440.20, which effectively seeks both to set aside his sentence and to vacate his conviction. However, the defendant has raised no proper grounds for either setting aside his sentence or vacating his conviction: he makes no claims assailing the legality of either his plea or sentence, nor does he allege any impropriety in any of these proceedings. Additionally, the defendant has not indicated that he wishes to take back his plea, and, in any event, has proffered no basis for doing so. Rather, the defendant would like to simply replace this conviction with a Y.O. adjudication, but this court finds that there is no basis for granting the relief requested.

As a starting observation, the defendant has not presented this court with any legal basis for setting aside his original sentence, and, indeed, this court perceives none, as the sentence imposed was, in all respects, a legal one (see, CPL 430.10; cf., CPL 440.20).

CPL 430.10 prohibits a court from altering a commenced incarceration sentence (which is a legal sentence), except where specifically authorized by law. Also, even when a term of imprisonment has not begun, a lower court is without authority to modify a sentence if the term of the court in which the sentence was imposed has passed (People v Chunn, 186 AD2d 262, 263 [1992]; People v White, 121 AD2d 762, 763-764, lv. denied, 68 NY2d 774 [1986]). On the other hand, where the original sentence is illegal, CPL 440.20 allows for the vacatur of such sentence, even after incarceration has commenced (People v Turner, 47 AD2d 564, 565 [1975]). But, if the sentence is legal, the court is not authorized to modify it (People v Corso, 40 NY2d 578, 580 [1976]). Accordingly, there is absolutely no reason to set aside the sentence here.

Insofar as a Youthful Offender adjudication is not a sort of sentence, but actually is a substitute for a conviction (see, CPL 720.10[4] and 720.20[3]), in order to obtain the desired relief, rather than merely seeking a re-sentencing, the defendant would need to establish a basis for setting aside the conviction (see, People v Ferguson, 119 AD2d 338, 343, lv. denied, 69 NY2d 711), but he has none. In any event, such an application would be untimely at this point, and, under the circumstances here presented, meritless.

The proper time to make an application for Youthful Offender treatment is prior to sentencing and the court's determination must be made at the time of sentencing, after receipt of the presentence investigation report (see, People v Gina M.M., 40 NY2d 595, 597); CPL 720.20[1]). Where the court has failed to consider same upon an application made by an eligible youth, or has otherwise improperly denied the application, such may be raised upon appeal from the resulting conviction (see, People v Harrington, 281 AD2d 748, 748-749 lv. denied, 96 NY2d 830), and, indeed, must be raised upon appeal, rather than by way of post-judgment motion. However, that was not the case here; the court did consider whether to accord Mr. Edwards Y.O. treatment and rendered its decision prior to sentencing.

A court has no power under CPL 440.20 to set aside a sentence and replace it with a Youthful Offender adjudication where there was no defect or invalidity in the original sentence (see, People v Ferguson, supra, 119 AD2d at 342-343). Moreover, the defendant has raised no legally cognizable basis for disturbing the sentence originally imposed.

While, fundamentally, the defendant's motion may be characterized as a request to vacate the judgment in the interest of justice, such a claim is not cognizable as there exists no authority to vacate a judgment in the interest of justice or on equity grounds (People v Forbes, 191 Misc 2d 573, 576; see cases cited therein, including, People v Agero, 234 AD2d 94, 95; People v Cole, 1 Misc 3d 531, 534 [2003]; see, People v Hawkins, 99 NY2d 592, 593 [2003]).

Therefore, the motion is equally and further denied on this basis as well, namely, that the court has not the power to vacate the instant conviction in the interest of justice in order to prevent Mr. Edwards' deportation, or, more accurately, to change his status to non-deportable so that he may legally reside in this country by replacing an otherwise valid conviction with a Y.O. adjudication. Furthermore, even if it had such authority, this court does not believe that it would be appropriate to exercise it in such manner in this case for the sole purpose of circumventing Federal law and Immigration regulations and policies.

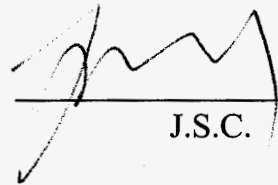
Finally, having reviewed the transcribed plea minutes, the court finds nothing in the plea proceedings which either casts significant doubt upon the defendant's guilt or calls into question the voluntariness of his plea (cf., People v Lopez, 71 NY2d 662, 666-668). To the contrary, upon this record the court concludes that the defendant's plea of guilty was knowingly, voluntarily, and intelligently entered and that the defendant fully understood the implications and consequences of his plea (see, People v Harris, 61 NY2d 9, 16-20). Thus, upon such factual and procedural background, this court determines that the motion should be denied in its entirety pursuant to CPL 440.30(4)(a) for having no legal basis.

In light of all of the above, having found it appropriate to address the instant motion on its merits, the court declines to discuss the claim of mootness raised by the People.

In conclusion, the defendant's motion is, respectfully, denied in toto.

The foregoing constitutes the decision and order of the court.

Dated: Brooklyn, New York
June 23, 2010



J.S.C.

ENTERED
JUL - 1 2010
NANCY T. SUNSHINE
COUNTY CLERK