

People v Williams
2012 NY Slip Op 32254(U)
July 9, 2012
Supreme Court, Kings County
Docket Number: 10362/06
Judge: Raymond Guzman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS – PART 9

----- X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER
Ind No.: 10362/06

MIGUEL WILLIAMS,

Defendant.

----- X
RAYMOND GUZMAN, J.S.C.

INTRODUCTION

On January 17, 2006, Police Officer Charles Vasquez went to 675 Lincoln Avenue, Apartment 4-C, in response to a radio call of shots fired. At the apartment, Officer Vasquez spoke to Randall Parham and Doris Bolden who informed him that a man named either Michael Williams or Miguel Williams had entered their apartment and fired a weapon into the floor. Officer Vasquez noticed a burn mark on the floor, a bullet hole in a wall, and a spent shell casing. In addition to giving Vasquez the name of the shooter, the couple provided a description and told Vasquez that he lived upstairs in their building, in Apartment 9-E.

Accompanied by other officers who had arrived in response to the call, the police knocked on the door to Apartment 9-E. After a few minutes, defendant opened the door and appeared in the foyer of the apartment. Defendant was pulled from the foyer into the hallway by Vasquez, and in the process, the door to the apartment closed behind them. Defendant was placed in handcuffs in the hallway and a security pat down was done. Defendant had no contraband on his person. The police, who continued to hear voices from inside apartment 9-E, knocked on the door to the apartment again and alerted the occupant that they were going to have the door broken down. At this point a second man opened the door and defendant identified this man to the police as his cousin. The Police

handcuffed defendant's cousin, Ronnie Miller, and patted him down as well.

Because the police were unaware of who had done the shooting, or the whereabouts of the firearm, they made a security sweep of the apartment checking only places large enough for an individual to hide. During this sweep, the officers noticed contraband in plain view. Defendant was transported back to the 75th Precinct, and an officer was posted at the apartment until a search warrant was secured.

Once a search warrant was secured, a search of the apartment revealed both narcotics and a firearm. Defendant was charged with two counts of Criminal Possession of a Controlled Substance in the Third Degree (Penal Law § 220.16[1], [12]); Criminal Possession of a Weapon in the Second Degree (Penal Law § 265.03[2]); Criminal Possession of a Weapon in the Third Degree (Penal Law § 265.02[1]); Criminal Possession of a Controlled Substance in the Seventh Degree (Penal Law § 220.03); Reckless Endangerment in the Second Degree (Penal Law § 120.20); and Menacing in the Third Degree (Penal Law § 265.02[3]).

Defendant moved to suppress the physical evidence recovered from his apartment, and to suppress inculpatory statements he made to the police following his arrest. A pretrial Payton/Huntley hearing was held where Officer Charles Vazquez testified on behalf of the People. Following the hearing, Officer Vazquez's testimony was found credible and defendant's applications to suppress were denied (D'Emic, J., hearings only).

Following a jury trial, defendant was convicted of one count of Criminal Possession of a Controlled Substance in the Third Degree and Criminal Possession of a Weapon in the Third Degree. On July 27, 2007, defendant was sentenced by this Court, which presided over the trial, to a determinate term of seven years imprisonment for the Criminal Possession of a Controlled Substance

in the Third Degree conviction, and a concurrent indeterminate term of two to four years imprisonment for the Criminal Possession of a Weapon in the Third Degree conviction.

Defendant appealed his conviction to the Second Department arguing that hearing court erred in not suppressing the physical evidence or his statement. By decision and order dated December 15, 2009, the judgment of conviction was affirmed. People v Williams, 68 AD3d 1025 (2d Dept 2009).

Defendant now moves this Court, pursuant to CPL § 440.10(1)(f) and CPL § 440.10(1)(h) for an order vacating his judgment of conviction on the grounds that he was denied the effective assistance of counsel in violation of the Sixth Amendment. Specifically, defendant contends that his counsel failed to call a witness to impeach Officer Vazquez at the pre-trial Payton hearing, and failed to obtain a piece of evidence which also contradicted that testimony. The People oppose defendant's application on the grounds it is meritless.

For the following reasons, defendant's motion is denied.

LEGAL ANALYSIS

Defendant contends that his defense counsel was ineffective for failing to call his cousin, Rodney Miller, as a witness at the Payton hearing to impeach the testimony of Officer Vazquez. Defendant has included an affidavit from Miller which states that he was roused from his bed by police officers who kicked in his door. He also states he saw a more invasive search than Officer Vazquez testified to at the suppression hearing.

Additionally, defendant has included as Exhibit B to his motion papers a repair order for the apartment door which indicates there was damage to the lock from the door being forced open. Defendant contends that his counsel's failure to obtain and utilize this document was ineffective.

Criminal Procedure Law, § 440.10(2) provides in pertinent part:

Notwithstanding the provisions of subdivision one, the court must deny a motion to vacate a judgment when:

(C) Although sufficient facts appear on the record of the proceedings underlying the judgment to have permitted, upon appeal from such judgment, adequate review of the ground or issue raised upon the motion, no such appellate review or determination occurred owing to the defendant's unjustifiable failure to take or perfect an appeal during the prescribed period or to his unjustifiable failure to raise such ground or issue upon an appeal actually perfected by him.

The Court of Appeals has explained, “The purpose of [these] provisions is to prevent CPL § 440.10 from being employed as a substitute for direct appeal when defendant was in a position to raise an issue on appeal (CPL § 440.10[2][b]) or could readily have raised it on appeal but failed to do so (CPL 440.10[2][c]).” People v Cooks, 67 NY2d 100, 103-104 (1986)(citing, People ex rel. Gibbs v. Vincent, 39 NY2d 918 [1976]; Bellacosa, Practice Commentaries, McKinney's Cons.Laws of NY, Book 11A, CPL § 440.10, p 320).

The law is clear in this area, a motion brought pursuant to CPL § 440.10(1) *must* be denied when the circumstances described in CPL § 440.10(2) exist. *See, People v Cuadrado*, 9 NY3d 362 (2007). Defendant’s motion falls under CPL §440.10(2)(c), in that he failed to advance his claim regarding the ineffectiveness of defense counsel on his direct appeal. Defendant admits in his papers that he had informed his trial counsel of Miller’s existence and that the door was forced open by the police, but his Counsel chose to utilize these facts at trial as opposed to at the hearing. Once counsel failed to raise these issues during the hearing, they became a matter on the record from which

defendant could have, and should have appealed his conviction. Therefore, defendant's motion is procedurally barred from CPL § 440.10 review.

Even were the motion not procedurally barred, defendant's motion would still be meritless. A defendant in a criminal proceeding is constitutionally entitled to effective assistance of counsel Strickland v Washington, 466 US 668 (1984); People v Linares, 2 NY3d 507, 510 (2004); *see also*, US Const, 6th Amend; NY Const, art 1, §6. To prevail on an ineffective assistance of counsel claim under the federal standard, the defendant must be able to show that counsel's conduct was outside the "wide range of professionally competent assistance." Strickland v Washington, 466 at 690. Defendant also must be able to show that, but for counsel's errors, the outcome of the trial would have been different. Id. at 694.

Under New York law, the constitutional standard of effective assistance of counsel will be satisfied when "the evidence, the law, and the circumstances of a particular case, viewed in totality and as of the time of the representation, reveal that the attorney provided meaningful representation." People v Flores, 84 NY2d 184, 187 (1994); People v Baldi, 54 NY2d 137, 147 (1981). Moreover, "[t]his protection does not guarantee a perfect trial, but assures the defendant a fair trial." People v Flores, at 187. Accordingly, the reviewing court must separate ineffectiveness from "mere losing tactics" and the defendant must "demonstrate the absence of strategic or other legitimate explanation" for counsel's conduct. People v Baldi at 146; People v Rivera, 71 NY2d 705, 709 (1988). Defense counsel's choice of strategy, even if unsuccessful, does not rise to the level of ineffective assistance as long as it is reasonable under the circumstances. People v Benevento, 91 NY2d 708, 713 (1998). Defendant must also show that his right to a fair trial was prejudiced by the unfairness of the proceedings as a whole. People v Stulz, 2 NY3d 277, 284 (2004).

The record indicates that counsel provided a competent performance, including appropriate objections, based upon a reasonable defense strategy. Defendant was afforded meaningful representation under the circumstances. *See People v Satterfield*, 66 NY2d 796, 799-800 (1985). Counsel employed legitimate strategy in deciding when to make objections and what evidence to present. *People v Benevento* at 713. Defendant has also failed to establish that he was prejudiced either by counsel's performance or by the unfairness of the proceedings as a whole. *See, Strickland* at 694; *Stulz* at 284.

Defendant's claims of ineffectiveness, which amount merely to quarrels over strategy, are meritless. Rodney Miller's presence at the search was known to defense counsel, and defendant admits that his counsel was told that Miller was willing to testify. Miller was not called as a witness, and this Court will not speculate as to why he was not called as a witness at the hearing. It is incumbent on defendant to show that this was not merely a strategic decision of his counsel not to call Miller, and defendant has failed to do so.

Additionally, it appears from the record that defense counsel made a tactical decision to wait until trial to inquire about the door being forced open. Again, the Court will not speculate as to why counsel held this information, but defendant must show it was more than merely a losing tactic. Accordingly, even were defendant's motion not procedurally barred, it would be without merit and denied.

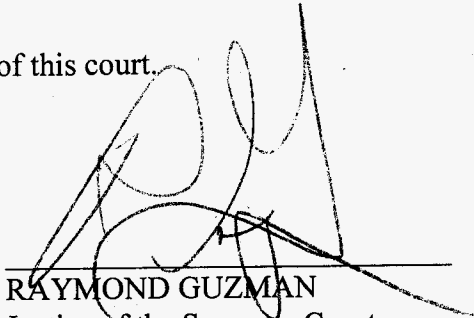
Finally, because defendant's motion is procedurally barred, and because his contentions are meritless, the Court need not hold a hearing pursuant to CPL § 440.30(5). *See*, CPL § 440.30(2), (3).

CONCLUSION

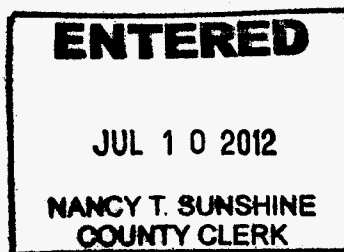
For the foregoing reasons, defendant's motions to vacate his judgment of conviction pursuant to CPL § 440.10 is denied.

This opinion shall constitute the decision and order of this court.

Dated: July 9, 2012
Brooklyn, New York



RAYMOND GUZMAN
Justice of the Supreme Court



The defendant is hereby advised of his right to apply to the Appellate Division, Second Department, 45 Monroe Place, Brooklyn, New York 11201, for a certificate granting leave to appeal from this determination. This application must be made within 30 days of service of this decision. Upon proof of financial inability to retain counsel and to pay the costs and expenses of such appeal, the defendant may apply to the Appellate Division for the assignment of counsel and for leave to prosecute the appeal as a poor person and to dispense with printing. Application for poor person relief will be entertained only if and when permission to appeal or a certificate granting leave to appeal is granted. See 22 NYCRR §671.5.


Justice Raymond Guzman

