

People v Jefferson
2012 NY Slip Op 32266(U)
June 28, 2012
Sup Ct, Kings County
Docket Number: 4284/91
Judge: William E. Garnett
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM, PART MISC

THE PEOPLE OF THE STATE OF NEW YORK

-against-

Earl Jefferson,

Defendant.

DECISION AND ORDER

Ind. #4284/91

Date: June 28, 2012

By: Hon. William E. Garnett

The defendant moves pro se, pursuant to CPL §440.20, to set aside the sentences imposed on June 4, 1992.

Background

In June of 1992, the defendant was convicted by a jury of two counts of murder in the second degree pursuant to PL §125.25(1) and was thereafter sentenced to consecutive prison terms of twenty-five years to life.

On direct appeal, the defendant had argued that the court had abused its discretion by imposing an unduly harsh and excessive sentence. He had not argued that the sentences were unlawful. The Appellate Division affirmed the defendant's judgment of conviction. People v. Jefferson, 212 A.D.2d 546 (2d Dept. 1995). Regarding the sentencing claim, the Court said, "in view of the gravity of the crimes and the lack of circumstances which would warrant a lower sentence, we decline to modify the defendant's sentence." Leave to appeal to the New York Court of Appeals was denied in April of

1995. People v. Jefferson, 85 N.Y.2D 939 (1995).

Defendant filed a pro se motion to vacate his judgment of conviction pursuant to CPL §440.10 in April of 1997 claiming ineffective assistance of counsel. He withdrew his motion when the People filed their answer. In August, 1998, the defendant again filed a pro se motion to vacate his judgment of conviction pursuant to CPL §440.10, this time claiming that the verdict sheet had been defective. The Supreme Court, Kings County, denied the motion holding that the claim was procedurally barred and meritless.

The defendant thereafter filed a third pro se motion to vacate his judgment of conviction pursuant to CPL §440.10. The defendant claimed that his trial counsel had been ineffective, that the People had failed to disclose Brady material and that he had discovered new evidence which warranted a vacatur of his conviction and a new trial. The Supreme Court, Kings County, conducted a hearing on this motion in March of 2007. The Court directed the parties to submit supplemental papers by April of 2007 and any rebuttal papers by May, 2007. The Court adjourned the case for decision to June 28, 2007. In July of 2008, the defendant filed a pro se addendum to this motion claiming that the imposition of consecutive sentences was unlawful because there had been only one act causing both murders, i.e., that the murder of one was a material element of the murder of the other. It appears from the court file and records that this motion was never decided.

The defendant's current pro se motion moves to set aside his sentences pursuant to CPL §440.20. The defendant reiterates his earlier claim that the same act caused the deaths of the two victims and he should therefore have only been sentenced to concurrent, not consecutive, terms of imprisonment.

Conclusions of Law

CPL §440.20 provides that a court may set aside an unlawful sentence. The defendant was convicted of two counts of intentional murder in the second degree. The defendant contends that his sentence to two, consecutive terms of twenty-five years to life was illegal because it was unlawful to impose consecutive sentences as the offenses were committed through a single act or omission and one offense was a material element of the other offense. See P.L. §70.25(2); People v. Braithwaite, 63 N.Y.2d 839, 843 (1984).

In this case, the defendant acted in concert with accomplices who, together with the defendant fired, at least, nineteen (19) shots from, at least, three weapons at the victims, Ronnie Fisher and Eric Starling. The defendant argues that only a single act was the "actus reus" for each murder and, thus, concurrent sentences were required by law. The defendant hypothesizes that Fisher and Starling may have been killed by the same bullet. The burden of proof lies with the defendant to offer evidence to prove any alleged facts by a preponderance of the evidence. CPL §440.30(6).

The defendant has provided no evidence to bolster his allegation. Additionally, the evidence introduced at trial provides no support for his theory. The trial evidence shows that a bullet hit Fisher. This bullet entered his lower left back, traveled through his body and lodged in his chest. This .380 caliber bullet was recovered during the autopsy. A bullet entered Starling's head at the base of his skull, moved upwards and exited above and behind Starling's left ear. No bullet was recovered from Starling's body. However, a deformed .25 caliber bullet was recovered from a car near where Starling's body was found. In light of the actual ballistic evidence, it is extremely unlikely that the same bullet killed both Starling and Fisher. The trial evidence is more consistent with the theory that Fisher and Starling were killed by separate bullets.

The defendant claims that the trial court told the jury that the murder of Fisher was a material element of the murder of Starling and that the murder of Starling was a material element of the murder of Fisher. The defendant is mistaken. The elements of the crimes do not overlap in this case as one murder is not an element of the other. To prove the defendant's guilt for the murder of Starling, the People were not required to prove that the defendant had also murdered Fisher, and vice versa. CPL §125.25 (1).

The defendant mistakenly relies on People v. Rosas, 8 N.Y.3d

493 (2007), in which the Court of Appeals held that the imposition of consecutive sentences was unlawful. In Rosas, the defendant was convicted of two counts of murder in the first degree. The defendant had violated P.L. §125.27(1)(a)(viii) which requires that there be multiple victims. Thus, the People were required to prove each murder in order to obtain a conviction for murder in the first degree. The prosecution was required to prove the murder of each victim as material elements of murder in the first degree. Concurrent sentences were required in Rosas as the death of another person was a material element of the defendant's murder of a second person. This is not the case here where the deaths of multiple victims are charged in two separate counts each of which requires proof of separate, independent acts and deaths.

The court's instructions to the jury were comprehensible. The trial court explained the elements of each offense submitted to the jury. The court was clear that four counts related to the death of Fisher and that four counts related to the death of Starling. As to the relevant charges of intentional second degree murder, the court was explicit in its instructions and even listed the elements:

"element number one: that...defendant shot Ronald Fisher or as to count five, Eric Starling. Second element: that the defendant shot Ronnie Fisher, that is count one, and Eric Starling, count five, with the intent to cause the death of Ronnie Fisher and under count five Eric Starling."

The fact that the court instructed the jury that the murders arose from the same criminal transaction is irrelevant. Despite

both victims' deaths during the course of the same criminal transaction, the imposition of consecutive sentences was permissible because the firing of multiple shots during this transaction constituted separate and distinct acts. People v. Boone, 30 A.D.3d 535, 536 (2d Dept. 2006); People v. Porter, 256 A.D.2d 363, 364 (2d Dept. 1998); People v. Reyes, 239 A.D.2d 524, 525 (2d Dept. 1997). Even though a defendant's separate offenses took place during the same criminal transaction, it is well established that consecutive sentences may be imposed if the elements of the crime do not overlap. Braithwaite, at 843; People v. Bridges, 63 A.D.3d 752, 752. In People v. Sanchez, 131 A.D.2d 606, 609 (2d Dept. 2009), the Court held that despite both crimes having occurred during the same criminal transaction, the defendant was not entitled to one term of imprisonment for "the commission of two equally reprehensible crimes." Indeed, the sentencing judge in this case made it clear that he believed these two crimes were equally reprehensible. See Respondent's Exhibit A, p. 9.

Thus, the deaths of these victims were not as a result of a single act. Moreover, the independent and separate acts which caused the deaths of these victims were not material elements of each of these distinct crimes. People v. McKnight, 16 N.Y.3d 43, 47-48 (2010).

The imposition of consecutive sentences for crimes which occur during a single criminal transaction does not violate the Double

Jeopardy Clause. U.S. v. Dixon, 509 U.S. 688, 696 (1993); Matter of Suarez v. Byrne, 10 N.Y.3d 523, 532 (2008). Therefore, the defendant's claim of a double jeopardy violation is without merit.

Thus, based on the foregoing discussion and analysis, the defendant's motion is denied.

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

The defendant is hereby advised of his right to apply to the Appellate Division, Second Department, 45 Monroe Place, Brooklyn, NY 11201 for a certificate granting leave to appeal from this determination. This application must be made within thirty days of service of this decision. Upon proof of financial inability to retain counsel and to pay the costs and expenses of the 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 [22 NYCRR 671.5].

The application must contain your name and address, indictment number, the questions of law or fact which you believe ought to be reviewed and a statement that no prior application for such certificate has been made. You must include a copy of the court order and a copy of any opinion of the court. In addition, you must serve a copy of your application on the District Attorney.

Kings County District Attorney
Appeals Bureau
350 Jay Street
Brooklyn, NY 11201

Kings County Supreme Court
Criminal Appeals
320 Jay Street
Brooklyn, NY 11201

Dated: June 28, 2012
Brooklyn, New York



William E. Garnett
A.J.S.C.

