

People v Harris
2012 NY Slip Op 32757(U)
October 24, 2012
Supreme Court, Kings County
Docket Number: 15265/96
Judge: Miriam Cyrulnik
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SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM PART 20

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

-against-

DECISION AND ORDER
Indictment No: 15265/96

DARREL HARRIS,

Defendant

-----X

Miriam Cyrulnik, J:

The defendant moves to vacate his judgment of conviction, pursuant to CPL §§440.10 (1) (c) and (h), alleging that he was denied the right to a fair trial and that he was denied effective assistance of counsel. The People oppose. In determining this motion, the court reviewed defendant's Motion to Vacate Judgment, the People's Affirmation in Opposition and defendant's Affidavit in Reply.

On May 19, 1998, defendant was convicted by a 12-person jury of six counts of Murder in the First Degree, one count of Attempted Murder in the First Degree, and one count of Criminal Possession of a Weapon in the Second Degree. On June 6, 1998, the same jury sentenced defendant to death on each count of Murder in the First Degree, which was subsequently imposed by the sentencing court on July 21, 1998, to run concurrently with consecutive sentences of 25 years to life on the attempted murder count and 7½ to 15 years on the weapons possession count. Defendant appealed his conviction and death sentence to the New York Court of Appeals. On July 9, 2002, the Court of Appeals upheld the conviction for each of the counts, but vacated the death sentences (*People v. Harris*, 98 NY2d 452 [2002]).¹ Defendant was re-sentenced on August 29, 2002 on the

¹ Vacatur was based on the Court of Appeals decision in *Matter of Hynes v. Tomei*, 92 NY2d 613 (1998), *cert denied*, 527 US 1015 (1999), finding unconstitutional the guilty plea provisions of the death penalty statute. The court's holding pertained only to the sentence of death, and left the conviction itself in place.

Murder in the First Degree counts, and received terms of life imprisonment without parole on each count. The other sentences were not changed.

Defendant subsequently brought a petition for a Writ of *Habeas Corpus* in the United States District Court for the Eastern District of New York, which was denied on July 23, 2004 on all grounds, including a request for heightened scrutiny, challenges to jurors, and the court's preclusion of a sur-rebuttal witness for the defense (*Harris v. Goord*, 2004 US Dist LEXIS 14017 [EDNY 2004]). Defendant's ensuing requests for a Certificate of Appealability were denied by both the Eastern District Court and the United States Court of Appeals for the Second Circuit.

By its order, dated January 18, 2011, this court denied defendant's *pro se* motion to vacate his conviction, pursuant to CPL §440.10, in which he alleged that he was denied the right to plead not guilty and proceed to trial and denied the right to effective assistance of counsel as a result thereof.

By the instant *pro se* motion, dated February 28, 2012, defendant argues that he was denied a fair trial due to the admission of evidence known to the People and defense counsel to be false and misleading. Defendant also claims ineffective assistance of counsel as a result of this conduct.

DEFENDANT'S CLAIMS THAT HE WAS DENIED A FAIR TRIAL AND EFFECTIVE
ASSISTANCE OF COUNSEL ARE PROCEDURALLY BARRED

CPL §440.10 (3) (c) states:

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

(c) 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.

By his motion, dated June 22, 2010, defendant sought to vacate his judgment of conviction pursuant to CPL §440.10, arguing that he was denied the right to plead not guilty and proceed to trial and, as a result, denied the right to effective assistance of counsel. By affirmation, dated September 10, 2010, the People opposed defendant's motion. On January 18, 2012, this court rendered its decision denying defendant's motion to vacate in its entirety.

In his *pro se* motion, dated June 22, 2010, defendant made extensive arguments regarding his rights to a fair trial and effective assistance of counsel. However, although the information upon which he bases the instant motion was readily available to him in June 2010, defendant failed to include these issues and arguments when he made the 2010 motion. Additionally, defendant now offers no reason for the omission of his present arguments from his previous 440 motion.

It is well settled that a court may summarily deny a motion to vacate, pursuant to CPL §440.10 (3) (c), where defendant presents arguments that could have been raised on a previous motion to vacate (*see People v. Cochrane*, 27 AD3d 650 [2d Dept 2006], *lv denied* 7 NY3d 787 [2006]; *People v. Brown*, 24 AD3d 271 [1st Dept 2005], *lv denied* 6 NY3d 846 [2006]; *People v. Dover*, 294 AD2d 594 [2d Dept 2002], *lv denied* 98 NY2d 767 [2002]; *People v. Thomas*, 147 AD2d 510 [2d Dept 1989], *lv denied* 74 NY2d 669 [1989]). Defendant's failure to raise the grounds and issues presented in the instant motion when he made his previous motion to vacate, despite being in a position to do so, is a procedural bar pursuant to CPL §440.10 (3) (c).

EVEN IF DEFENDANT'S INSTANT MOTION WAS NOT PROCEDURALLY BARRED
PURSUANT TO CPL §440.10 (3) (c), HIS CLAIMS ARE WITHOUT MERIT AND ARE
PROCEDURALLY BARRED PURSUANT TO CPL §440.30 (4) (d).

Criminal Procedure Law 440.30 (4) (d) states:

Upon considering the merits of the motion, the court may deny it without conducting a hearing if:

(d) An allegation of fact essential to support the motion is (i) contradicted by a court record or other official document, or is made solely by the defendant and is unsupported by any other affidavit or evidence, and (ii) under these and all the other circumstances attending the case, there is no reasonable possibility that such allegation is true.

In the instant motion, defendant's claims that the prosecution and defense knowingly allowed evidence that was false and misleading to be admitted at trial are substantively without merit. In support of these claims, defendant offers nothing more than his own recollection of events and strained interpretations of police documents, unsupported by any other affidavit or evidence.

Defendant's latest claim of ineffective assistance of counsel is likewise without merit. As observed by this court in its January 18, 2011 decision, defendant's defense attorneys, members of the Capital Defense Unit of the Legal Aid Society, were skilled and competent in their knowledge, preparation and implementation of this case. They employed investigators, doctors, consultants, and other professionals, in order to present the best possible defense. Nothing in defendant's instant motion demonstrates that his counsel engaged in the conduct of which he accuses them or that they rendered him ineffective assistance. Thus, the defendant's claim is procedurally barred under CPL 440.30 (4) (d).

In addition to the procedural bars discussed above, defendant offers no excuse or explanation for his delay in bringing the instant motion. As observed in this court's decision of January 18, 2011, defendant waited 12 years from his conviction and 8 years from his appeal to bring his first motion to vacate pursuant to CPL §440.10. The court appropriately took this into consideration in

denying defendant's previous motion (*see People v. Torres*, 2010 NY Slip Op 33167U [Sup Ct Kings County 2010]), holding that "defendant's credibility is undermined by the substantial period of time that passed before submitting" a CPL 440.10 and 440.20 motion 15 years after appealing the decision, and noting that in *People v. Nixon*, 21 NY 2d 338 [1967], the court "held that a delay of more than a decade was an important factor to be considered in evaluating the seriousness of the defendant's claims"; *see also People v. Degondea*, 3 AD3d 148 [1st Dept 2003], *lv denied* 2 NY3d 798 [2004]; *People v. Melio*, 304 AD2d 247 [2d Dept 2003], *lv denied* 3 NY3d 644 [2004]; *People v. Hanley*, 255 AD2d 837 [2d Dept 1998], *lv denied* 92 NY2d 1050 [1999]; *People v. Sheppard*, 2010 NY Slip Op 32887U [Sup Ct Kings County 2010]; *People v. Perez*, 11 Misc3d 1093A [Sup Ct Kings County 2006]; *People v. Kirkland*, 1 Misc3d 904A [Sup Ct Kings County 2003]). Delays as lengthy as those in the present case "can be considered in evaluating the validity and legitimacy of a post-judgment motion" (*see People v. Torres*, 2010 NY Slip Op 33167U, *supra*).

In determining the instant motion, the court has taken into account defendant's additional delay of approximately 13 months from the decision on the previous motion to vacate his judgment. Although defendant relies heavily upon his claim that a stroke in 2004 prevented him from bringing the instant motion to vacate, he fails to explain why, after recovering sufficiently to serve his previous motion to vacate, he failed to include the present grounds or issues in that motion.

Accordingly, the defendant's motion to vacate his judgment of conviction is denied as procedurally barred pursuant to CPL §§440.10 (3) (c) and 440.30 (4) (d).

The defendant's right to an appeal from the order determining this motion is not automatic except in the single instance where the motion was made under CPL §440.30 (1) (a) for forensic DNA testing of evidence. For all other motions under CPL Article 440, the defendant must apply

to a Justice of the Appellate Division for a certificate granting leave to appeal. This application must be filed within 30 days after the defendant has been served by the District Attorney or the court with the court order denying this motion.

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

This constitutes the decision and order of the Court.

Dated: October 24, 2012

J.S.C.

