

People v Ingvarsdottir
2012 NY Slip Op 33848(U)
October 22, 2012
Supreme Court, Westchester County
Docket Number: 10-1485S
Judge: Richard A. Molea
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

FILED and ENTERED
OCTOBER 24, 2012
**WESTCHESTER
COUNTY CLERK**

FILED 112

-against-

OCT 24 2012

DECISION AND ORDER

THE HONORABLE JUDITH S. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Superior Court Information
No. 10-1485S

HELGA INGVARSDOTTIR,

Defendant.

-----X
MOLEA, J.

Upon consideration of the defendant's instant application seeking to withdraw her previously entered guilty pleas, the Court has considered the notice of motion, motion to withdraw guilty plea and reply of counsel for the defendant, Jonathan R. Pearson, Esq., and the affirmation in opposition and memorandum of law of Assistant District Attorney Virginia A. Marciano. Upon these submissions, the instant motion is decided as follows:

Relief Requested

Pursuant to Criminal Procedure Law § 220.60(3), the defendant seeks permission to withdraw the guilty pleas she entered before this Court on December 14, 2010 to the crimes of Grand Larceny in the first degree and Grand Larceny in the second degree, as charged under the instant superior court information pursuant to Penal Law §§155.40 and 155.42, respectively, upon her claims that she is innocent of the crimes of conviction, that she was misled by her former attorney concerning the need for her to enter her guilty pleas in order to secure her release from custody, that she was not properly advised of the likelihood of her deportation as a consequence of her guilty pleas by her former attorney, and her former attorney advised her not to reveal exculpatory information to the prosecution. The People oppose the defendant's instant

application, asserting that the defendant's guilty plea was knowingly, intelligently and voluntarily entered in all respects.

Findings of Fact

On December 14, 2010, the Court conducted a plea conference concerning the charges pending against the defendant under Superior Court Information (SCI) Number 10-1485S with former defense counsel, Robert Mancuso, Esq., and Assistant District Attorneys Steven Vandervelden and Nicole Gamble. On that date, the defendant was produced before the Court in the presence of Mr. Mancuso and the Court conducted a conference with the prosecutors and Mr. Mancuso, who advised the Court that the parties had reached an agreeable disposition of this case. During this conference, the parties advised the Court that the defendant intended to enter guilty pleas to the crimes of Grand Larceny in the first degree and Grand Larceny in the second degree pursuant to a cooperation agreement they had entered into with one another on a previous date which, in substance, provided that the defendant's anticipated sentence in this case would be subject to a variety of conditions which were known to the People and the defendant. Defense counsel indicated that he had previously discussed the specific terms of the plea agreement with the defendant, who was amenable to same and intended to avail herself of that negotiated plea agreement.

Upon the conclusion of this conference, the Court addressed the defendant on the record and explicitly advised her of the terms of the proposed plea agreement which had been related to the Court by Mr. Mancuso, specifically relating that it understood that the defendant sought to

enter guilty pleas to the class "B" felony offense of Grand Larceny in the first degree and the class "C" felony offense of Grand Larceny in the second degree, with the understanding that the minimum potential sentence for the crime of Grand Larceny in the first degree provides for a indeterminate term of imprisonment of between 1 and 3 years, and the maximum potential sentence for that crime is an indeterminate term of imprisonment of between 8½ and 25 years. The Court further stated that it understood that the defendant's negotiated plea bargain would require her to make restitution of 1.8 million dollars plus 10 percent interest to a realty company. The Court then asked Mr. Mancuso and the defendant if this accurately reflected their understanding of the terms of the proposed plea agreement, which prompted an affirmative response on the record from defense counsel. Upon that representation, the Court continued with the proceedings incident to the defendant's stated desire to enter guilty pleas in this case.

On the record, the defendant waived her right to a preliminary hearing under the then-pending felony complaint, and executed a written and waiver of her right to be prosecuted by an indictment following Mr. Mancuso's indication that he had previously discussed this matter with the defendant on several occasions. Following the Court's arraignment of the defendant under the instant SCI, Mr. Mancuso stated that the defendant had authorized him to enter guilty pleas under both Count One and Count Two charged thereunder, charging the crimes of Grand Larceny in the first and second degrees, respectively (hereinafter, the crimes of conviction). The Court then observed the defendant provide answers, under oath, to the detailed questions asked by Assistant District Attorney (ADA) Vandervelden during his *voire dire* of the defendant in connection with the entry of her guilty pleas. The Court also carefully observed the defendant's demeanor and listened to the inflections of her voice throughout these proceedings, noting that

the defendant responded to all questions asked of her in a confident and clear manner, without any equivocation or hesitation.

The Court finds significance in the affirmative responses provided by the defendant when she was questioned by ADA Vandervelden about her satisfaction with the representation and advice provided by Mr. Mancuso in connection with her decision to enter her guilty pleas, further affirming that she had an adequate opportunity to discuss the consequences of her guilty pleas with him. Of particular significance, the Court notes that when the defendant was directly questioned by ADA Vandervelden about her understanding that her guilty pleas might result in her deportation and exclusion from the United States, she acknowledged her understanding of same and affirmed that she had discussed those consequences of her guilty pleas with her attorney, which prompted Mr. Mancuso to state that he had advised the defendant that the “overwhelming odds” were that she would be deported from the United States as a consequence of her guilty pleas and that she expected that result. The defendant then privately conferred with Mr. Mancuso, leading him to advise the Court that the defendant had reminded him that she needed to have her visa extended to enable her to remain in the United States during the pendency of this case. The Court then went further to ensure that the defendant fully and completely understood that “the likelihood [was] that she would be deported based on [her] conviction and sentence”, which the defendant again acknowledged understanding through Mr. Mancuso’s verbal affirmation.

Furthermore, the Court notes that the defendant unequivocally acknowledged that she was pleading guilty because she was, in fact, guilty of those crimes which were charged under the instant SCI, that she was entering her guilty pleas freely and voluntarily in the absence of any

force or coercion from anyone, and that she was waiving the full panoply of rights associated with the trial of this matter including her right to confront and cross-examine the People's witnesses, to present witnesses and to testify on her own behalf at such a trial when the People would otherwise be required to prove all of the elements of each of the charged crimes beyond a reasonable doubt. Thereafter, in a very detailed manner, ADA Vandervelden asked the defendant questions concerning her specific conduct which established her guilt for the commission of each of the charged crimes which were the subject of her guilty pleas and the defendant responded by unequivocally acknowledging her criminal conduct for each of those crimes. Finally, the Court notes that following the completion of the defendant's plea allocution, the defendant responded affirmatively when asked if she understood everything that had been placed upon the record with regard to the entry of her guilty pleas and she indicated that she had no questions when asked by ADA Vandervelden. Upon this record, the Court accepted the defendant's guilty pleas, but only after the defendant had once again advised the Court that she did not have any questions when the Court inquired of her. Following the acceptance of the defendant's guilty pleas, the Court entertained a bail application from Mr. Mancuso, which was not opposed by the People, and granted his request to have the defendant's bail status altered to reflect a reduced cash alternative of \$200,000.00.

In advance of the imposition of sentence, the defendant discharged Mr. Mancuso as her attorney in this case and retained new counsel, Jonathan R. Pearson, Esq., who filed a notice of substitution and entry of counsel with this Court on September 20, 2012, and concomitantly filed the instant motion seeking the withdrawal of the defendant's guilty pleas.

Conclusions of Law

It is well-settled that a determination concerning an application to withdraw a previously entered guilty plea is directed to the sound discretion of the court and generally will not be disturbed unless same constitutes an improvident exercise of such discretion (*see* CPL 220.60[3]; *see also* *People v Seeber*, 4 NY3d 780; *People v Frederick*, 45 NY2d 520; *People v Elmendorf*, 45 AD3d 858, *lv. denied* 10 NY3d 810; *People v Martin*, 240 AD2d 5, *app. denied* 92 NY2d 856). In this regard, the appropriate inquiry concerning the validity of a guilty plea provides that same will be upheld where it is found to have been entered knowingly, voluntarily and intelligently (*see* *People v Fiumfreddo*, 82 NY2d 536; *People v Moisset*, 76 NY2d 909; *People v Harris*, 61 NY2d 9; *People v Douglas*, 83 AD3d 1092). In connection with such an inquiry, a defendant seeking the withdrawal of a previously entered guilty plea must be afforded a reasonable opportunity to advance his or her claims, although same will rarely require an evidentiary hearing due to the entitlement of the court to rely on the record of the plea proceedings to determine the intelligent, knowing and voluntary nature of the challenged guilty plea (*see* *People v Brown* 14 NY3d 113; *People v Ramos*, 63 NY2d 640; *People v Tinsley*, 35 NY2d 926, 927; *People v Morabito*, 253 AD2d 830).

Turning first to consider the claim of innocence raised by the defense in support of the instant application, defense counsel submits that the findings reached by a self-described trial consultant and expert witness in the area of domestic violence, Ms. Karla DiGirolamo, who was retained by the defense and related in a written report that the defendant was a victim of domestic violence when she committed the crimes of conviction, constitutes evidence of the defendant's

“actual innocence” of those crimes.¹ In this regard, defense counsel submits that Ms. Digirolamo’s findings in the DVE concerning the defendant’s victimization serve to establish that the defendant lacked the requisite criminal intent to commit the larceny-related crimes of conviction. However, although defense counsel initially argues that the DVE establishes the defendant’s innocence, he subsequently suggests that he believes that the People would have “softened their stance” in some unspecified manner with respect to the defendant if they had been privy to the DVE prior to the defendant’s entry of her guilty pleas in this case. Notably, the People do not lend any credence to either of defense counsel’s arguments concerning the significance of the DVE, as the affirmation they submit in opposition to the instant motion reflects their complete disagreement with the defendant’s claim that the DVE establishes the defendant’s innocence, or that their “stance” regarding the defendant would have been different if they had reviewed the DVE prior to the entry of the defendant’s guilty pleas.

Moreover, to the extent that the defense argues that the defendant is innocent of the crimes of conviction, the Court’s examination of the stenographic record of the plea colloquy reflects that when the defendant was questioned in a detailed manner by ADA Vandervelden, she indicated, in substance, that he was entering her guilty pleas because she was, in fact, guilty of committing the charged crimes of Grand Larceny in the first and second degrees. Furthermore, when ADA Vandervelden questioned the defendant about her specific conduct underlying the crimes which were the subject of her guilty pleas, the stenographic record of the plea proceeding

¹Ms. Karla Digirolamo was retained by the defendant’s former attorney, Mr. Robert Mancuso, Esq., on December 7, 2010 for the apparent purpose of conducting a so-called domestic violence evaluation (hereinafter, DVE) of the defendant, which was apparently conducted on January 7, 2011 and lead to her preparation of a written report on May 11, 2011.

reflects that the defendant unequivocally admitted to same.

Upon consideration of the foregoing, the Court finds that the defendant's claim regarding the significance of the DVE to the People's view of the defendant's culpability for the crimes of conviction is entirely speculative in nature and is soundly refuted through their affirmation in opposition to the instant motion, wherein they indicate that they had already considered the defendant's domestic violence victimization when they fashioned the plea bargain which resulted in the defendant's entry of guilty pleas to the crimes of conviction. Furthermore, the Court finds the defendant's claims of innocence to be conclusory and unsupported upon this record, as there is no legal authority known to this Court, nor cited by the defense, which stands for the proposition that a victim of domestic violence cannot simultaneously be victimized and possess the *mens rea* necessary to commit a larceny-related crime. Accordingly, as the record reveals that the defendant fully allocuted to the facts concerning her criminal conduct during the proffer of her guilty pleas, this Court finds that her subsequently raised conclusory allegations of innocence, as well as her claims concerning her domestic violence victimization defense, are patently insufficient to warrant the withdrawal of her guilty pleas (*see People v Dixon*, 29 NY2d 55; *see also People v Barnett*, 258 AD2d 526, *lv. denied* 93 NY2d 966; *People v Suggs*, 220 AD2d 630, *app. denied* 87 NY2d 851; *People v Meyers*, 204 AD2d 492, *app. denied* 84 NY2d 829; *People v Douglas*, 83 AD3d 1092; *People v Perez*, 83 AD3d 738; *People v Bunn*, 79 AD3d 1143).

Turning next to consider the defense claim that the defendant's guilty plea was the product of her former attorney's coercive pressure to persuade her to enter her guilty pleas by incorrectly advising her that doing so was the only means available to secure her release from

confinement, the defense relies solely upon the defendant's affidavit wherein she alleges that former defense counsel never fully explained to her how the bail bond process worked. Rather, she claims that her former attorney incorrectly advised her that she could only be released from confinement if she availed herself of the plea bargain offered by the People which would include their consent to a dramatic reduction of her cash bail alternative from \$3,000,000.00 to \$200,000.00. Significantly absent from the defendant's affidavit, or that of her mother, Ingigerdur Agusta Gudmundsdottir, is any factual support in the form of financial records, bank statements, real property appraisals, or similar documentation, which establishes a verifiable basis to support the defendant's claim that she would have been capable, had she been adequately advised of the bail process, of posting the necessary collateral to alternatively secure her release upon the \$5,000,000.00 bond which had been set at her arraignment. As a result of the defendant's failure to support this claim with sufficient documentary evidence which establishes that the alleged misleading advice provided by her former attorney would have been of any consequence to her insofar as her actual ability to post the necessary collateral to secure her release upon the \$5,000,000.00 bond is concerned, as well as her failure to support this claim with an affidavit from her former attorney which substantiates her claim regarding the nature of his advice in this regard, the Court finds the instant claim of coercion to be conclusory.

Moreover, the allegations of coercion raised by the defense counsel are entirely unsubstantiated by the stenographic record of the plea colloquy which reveals that the defendant's guilty pleas were entered after she unequivocally acknowledged that she was pleading guilty because she was, in fact, guilty of those crimes which were charged under the instant SCI, and that she was entering her guilty pleas freely and voluntarily in the absence of any

force or coercion from anyone, which significantly undermines her present claim that she plead guilty solely to secure her release from confinement rather than because she was guilty of her crimes of conviction.

Furthermore, the stenographic record reveals that the defendant provided affirmative responses when she was questioned about her satisfaction with the representation and advice provided by her former attorney in connection with her decision to enter her guilty pleas, and that she had been afforded an adequate opportunity to discuss her decision to enter her guilty pleas with him. In this regard, the Court also finds significance in the fact that the defendant acknowledges in her affidavit that she was desperate to be released from confinement at the time when she entered her guilty pleas, and the record reveals that former defense counsel was, in fact, able to secure her release from custody immediately following the entry of her guilty pleas when the People refrained from opposing the dramatic reduction of her bail from a cash alternative of \$3,000,000.00 to a cash alternative of \$200,000.00 by this Court. Indeed, the advice defendant's former attorney provided to the defendant regarding her bail status and the available means of securing her release from continued confinement appears to have been consistent with a reasoned tactical recommendation which was designed to provide her with the relief she sought in terms of her prompt release from confinement (*see People v Polite*, 259 AD2d 566, *lv. denied* 93 NY2d 1025; *see also People v Bonner*, 251 AD2d 107, *lv. denied* 92 NY2d 923; *People v Spinks*, 227 AD2d 310, *lv. denied* 88 NY2d 995; *People v Owen*, 249 AD2d 492; *People v Hernandez*, 236 AD2d 557; *People v Sider*, 232 AD2d 666; *People v Jones*, 232 AD2d 505). Accordingly, upon consideration of the foregoing, the Court finds that the conclusory allegations made by the defendant to the effect that her former attorney had improvidently failed to adequately advise her

regarding the bail bond process and thereby impermissibly coerced her to enter her guilty pleas, are insufficient to warrant the withdrawal of her guilty pleas.

Turning next to consider the defendant's claim relating to her alleged misapprehension of the immigration consequences of the entry of her guilty pleas, the Court notes that same is predicated upon her assertion that her former attorney failed to adequately advise her of the likelihood that the entry of her guilty pleas to the crimes of conviction would result in her deportation and exclusion from the United States. With respect to this claim, the Court's examination of the stenographic record of the plea colloquy reflects that when the defendant was directly questioned in an explicit manner by ADA Vandervelden, she specifically acknowledged that she was aware that it was highly likely that she would be deported as a consequence of her guilty pleas and that she had been afforded an adequate opportunity to discuss those consequences of her guilty pleas with her attorney. Thereafter, her former attorney followed ADA Vandervelden's questioning of her on this issue by stating that he had already advised the defendant that the "overwhelming odds" were that she would be deported from the United States as a consequence of her guilty pleas and that he thought she expected that result.

Notably, although the defendant took an opportunity at this stage of her plea allocution to privately confer with her former attorney about her need to have her visa extended during the pendency of her sentencing, she neglected to raise any question or challenge to her understanding of the likelihood of her deportation. Despite, the significant attention already given by the People and the defendant's former attorney to the deportation issue, the Court went further and inquired again if the defendant's understanding was that she would likely be deported as a consequence of her guilty pleas, which the defendant's former attorney acknowledged again

while the defendant stood at his side. Accordingly, upon consideration of the foregoing, the Court finds that the claims raised by the defendant regarding her former attorney's alleged failure to adequately advise her of the deportation consequences of her guilty pleas are insufficient to warrant the withdrawal of her guilty pleas.

Finally, to the extent that the defendant argues that her former attorney advised her not to reveal exculpatory information to the prosecution, the Court notes that the defendant has failed to support these claims with any proof beyond her own self-serving affidavit, which is unavailing in the absence of any support appearing in the stenographic record, or contained within an affidavit from her former attorney. Most importantly, the Court finds the defendant's characterization of the information she withheld as "exculpatory" in nature reflects a failure on the part of her defense attorney to understand the meaning of that term of art. To be succinct, the defendant merely claims that she had no appreciation of the criminal nature of her actions at the time when she engaged in the conduct underlying her crimes of conviction. However, such claims do not constitute exculpatory evidence, but rather are mere self-serving protestations of ignorance and innocence. Accordingly, the defendant's unsupported claims relating to her former attorney's misadvice to her suggesting that she withhold exculpatory information from the prosecution is insufficient to merit the withdrawal of her guilty plea.

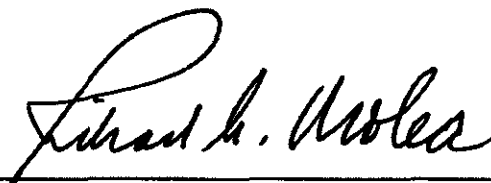
In sum, the Court's review of the stenographic record of the defendant's plea proceedings, including the defendant's unequivocal responses to the questions posed to her by the Assistant District Attorney during the plea colloquy indicating that she understood the proceedings, the rights she was waiving, her satisfaction with her attorney and the adequacy of her opportunities to confer with him, her understanding of the deportation-related consequences

of her guilty pleas, and her unequivocal allocation to the pertinent facts supporting the charges to which he entered her guilty pleas, provides significant proof to the satisfaction of this Court that the defendant's guilty pleas were knowingly, intelligently and voluntarily entered (*see People v Fiumfreddo*, 82 NY2d 536; *People v Moisset*, 76 NY2d 909; *People v Harris*, 61 NY2d 9).

Based upon the foregoing, the defendant's application to withdraw her guilty pleas is summarily denied (*see People v Barnett, supra*, at 526; *People v Dunbar*, 260 AD2d 644; *People v Bonds*, 254 AD2d 430; *People v Suggs, supra*, at 630; *People v Andrews*, 207 AD2d 406).

The foregoing shall constitute the Decision and Order of the Court.

Dated: White Plains, New York
October 22, 2012



Honorable Richard A. Molea
Acting Justice of the Supreme Court

TO:

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