

People v Watts

2013 NY Slip Op 33010(U)

November 20, 2013

Sup Ct, Kings County

Docket Number: 12119/94

Judge: Jo Ann Ferdinand

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM: PART 45

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THE PEOPLE OF THE STATE OF NEW YORK

DECISION AND ORDER

-against-

Date: November 20, 2013

Indict. No.: 12119/94

JAMES WATTS,

Defendant.

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JO ANN FERDINAND, J.

After a jury trial on June 20, 1995, the defendant was convicted of three counts of Robbery in the First Degree, two counts of Criminal Possession of a Weapon in the Second Degree, and two counts of Criminal Possession of a Weapon in the Third Degree. On August 7, 1995, he was adjudicated a second violent felony offender and sentenced to consecutive terms of imprisonment of ten to twenty years for two of the robbery counts, a concurrent term of imprisonment of ten to twenty years for the third robbery count, concurrent terms of seven and one-half to fifteen years for each of the CPW 2^o counts, and three and one-half to seven years for each of the CPW 3^o counts.

By pro se petition dated April 18, 1997, the defendant sought a writ of habeas corpus from the United State District Court for the Eastern District of New York, claiming that his right to due process had been violated by the assigned appellate counsel's failure to perfect his direct appeal from this judgment of conviction. Before this petition was decided, the defendant's appeal to the Appellate Division, Second Department, was perfected. As a result, by decision dated December 17, 1997, and order dated

December 23, 1997, the District Court dismissed the defendant's habeas corpus petition as moot. (Watts v. Artuz, No. CV 97-3024).

In his direct appeal, the defendant claimed that the trial court improperly marshaled the evidence, incorrectly instructed the jury regarding the identification testimony, and erroneously imposed consecutive sentences for two of the robbery convictions. He further claimed that remarks made by the prosecutor in summation deprived him of a fair trial. By decision and order dated June 29, 1998, the Appellate Division affirmed the defendant's conviction (People v. Watts, 251 A.D.2d 687). The defendant's application for leave to appeal to the Court of Appeals was denied. (People v. Watts, 91 N.Y.2d 931).

By pro se motion dated March 12, 1999, the defendant moved to vacate his judgment of conviction pursuant to *Criminal Procedure Law* § 440.10 on the grounds that the evidence before the Grand Jury was legally insufficient and that he received ineffective assistance of counsel. By decision and order dated July 7, 1999, this Court denied the motion, finding that the allegations concerning the sufficiency of the indictment had been previously raised in a pre-trial pro se motion that was denied on May 31, 1995, the defendant's claims about the indictment and the effectiveness of his attorney were statutorily barred pursuant to *Criminal Procedure Law* § 440.10(2)(c), and both of the defendant's claims lacked merit. On August 2, 1999, the defendant sought leave to appeal in the Appellate Division from the denial of this motion. By decision and order dated January 21, 2000, his application for leave to appeal was denied (Florio, J.).

By pro se application dated June 2000, the defendant sought a writ of error coram nobis in the Appellate Division to vacate, on the ground of ineffective assistance of appellate counsel, the decision and order dated June 29, 1998, affirming the judgment of conviction. By decision and order dated December 4, 2000, the Appellate Division denied this application (People v. Watts, 278 A.D.2d 260).

By pro se petition dated January 11, 2001, the defendant sought a writ of habeas corpus from the United States District Court of Eastern District of New York. Since the previous petition dated April 18, 1997, did not seek review of the any of the alleged errors that occurred at defendant's trial, the District Court stated that a second habeas corpus petition would not constitute a second or successive petition pursuant to 28 U.S.C. § 2244(b) (Trager, J.). Defendant raised four claims in this latest petition: the prosecutor's reference to co-defendant's prior criminal conviction in his summation was prejudicial; the trial court's imposition of consecutive sentences for two of the defendant's three robbery convictions was illegal; the defendant's trial counsel failed to object to the discharge of a sworn juror, thus constituting ineffective counsel; and the defendant's appellate counsel erred for failing to challenge the sufficiency of the indictment as well as neglecting to raise an ineffective claim of assistance of trial counsel. Subsequently, by order dated May 10, 2002, the District Court denied the habeas petition, adopting the Report and Recommendation of the Magistrate Judge, which found that defendant's claims were procedurally barred and meritless (Trager, J.).

Defendant's application for a certificate of appealability to the United States Court of Appeals for the Second Circuit was denied on October 1, 2002.

Defendant's petition for a writ of certiorari to the United States Supreme Court was denied on May 5, 2013 (Watts v. Miller, 538 US 1016).

By pro se motion dated May 29, 2013, the defendant now moves to vacate his judgment of conviction pursuant to Criminal Procedure Law § 440.10 and § 440.30 on the grounds that he was denied the effective assistance of counsel in violation of his state and federal constitutional rights. Specifically, the defendant claims that his trial counsel failed to argue that the defendant could not be adjudicated a second violent offender based on a prior 1990 felony conviction because that sentence was "illegal." Therefore, it could not be properly relied upon at his adjudication on August 7, 1995.

The defendant's motion is summarily denied. The motion is statutorily barred pursuant to CPL § 440.10 because the claim is grounded upon facts contained in the record and was not raised in the defendant's direct appeal (see CPL § 440.10[2][c]). Therefore, he is precluded from raising it in his motion to vacate his judgment of conviction (see People v. Cooks, 67 N.Y.2d 100, 104 [1986]; People v. Allen, 285 A.D.2d 470 [2d Dept 2001][Supreme Court properly denied the defendant's pro se § CPL 440.10 motion based upon his claim of ineffective assistance of counsel because the defendant could have raised his claims on appeal]; People v. Kotler, 271 A.D.2d 548 [2d Dept 2000]; People v. Pachay, 185 A.D.2d 287 [2d Dept 1992]). Secondly, even if the defendant could have raised the claim in a 440 motion, he had an opportunity to do so in his first motion to vacate his judgment of conviction, but did not (see CPL § 440.10[3][c]; People v. Williams, 5 A.D.3d 407 [2d Dept 2004]).

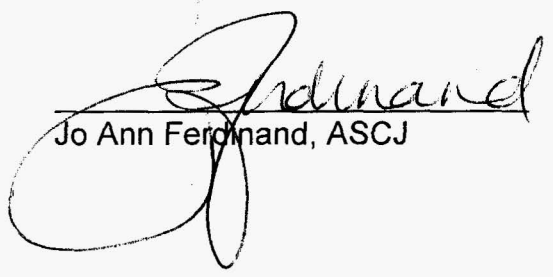
In any event, the defendant's claim is meritless. He argues that his trial counsel inadequately failed to challenge the constitutionality of his 1990 conviction. Under federal constitutional law, a defendant's claim of ineffective assistance of counsel passes muster when the "counsel's performance was deficient" such that "counsel was not functioning as the 'counsel' guaranteed [to] the defendant by the Sixth Amendment" (Strickland v. Washington, 466 U.S. 668, 687 [1984]). The court reviews "the reasonableness of counsel's challenged conduct on the facts of the particular case" and determines, given the "light of all the circumstances, [whether or not] the identified acts or omissions were outside the wide range of professionally competent assistance." Id. at 690. Similarly, under the New York State Constitution, a defendant's right to effective assistance of counsel is when counsel provides defendant with "meaningful representation" under the totality of the circumstances, and it's important "[t]he Constitution guarantees the accused a fair trial, not necessarily a perfect one" (People v. Benevento, 91 N.Y.2d 708 [1988]; People v. Sattersfield, 66 N.Y.2d 796, 798-99 [1985]; People v. Modica, 64 N.Y.2d 828, 828 [1985]; People v. Baldi, 54 N.Y.2d 137, 146-47 [1981]).

Here, contrary to the defendant's contentions, counsel did challenge the prior conviction on two legally viable grounds. Counsel claimed that the defendant was not informed of all his rights when he entered his plea of guilty and that the court failed to consider youthful offender treatment for the defendant. However, this court found that the defendant was fully advised of his rights during his 1990 conviction even if he did not recall being informed of his rights. Thus, his plea of guilty was still valid. Likewise, a

youthful offender adjudication is discretionary with the court. (see CPL § 720.20[1][a]; People v. Victor J., 283 A.D.2d 205 [1st Dept 2001]; People v. Allen, 259 A.D.2d 835 [3d Dept 1999]). Neither the prior court's explicit denial of youthful offender treatment nor the absence in the record of a request to consider youthful offender treatment renders the 1990 conviction invalid. To the extent that defendant claims that defendant counsel's arguments were insufficient, this claim is without merit. Therefore, the defendant was properly adjudicated a predicate felon.

Based upon on the foregoing reasons, the defendant's motion to vacate his judgment of conviction is denied.

This constitutes the decision and order of the court.


Jo Ann Ferdinand, ASCJ

ENTERED
NOV 27 2013
NANCY J. [unclear]
COUNTY CLERK