

**People v Burgos**

2013 NY Slip Op 34065(U)

February 13, 2013

Supreme Court, Westchester County

Docket Number: 12-0645

Judge: Richard A. Molea

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

**FILED and ENTERED**  
2/13/13  
**WESTCHESTER  
COUNTY CLERK**

-against-

**DECISION AND ORDER**

Indictment No. 12-0645

CARLOS BURGOS,  
  
Defendant.  
-----X  
MOLEA, J.

Upon consideration of the defendant's instant application seeking to withdraw his previously entered guilty plea, the Court has considered the notice of motion and affirmation in support of counsel for the defendant, Kevin Griffin, Esq., the affidavit of the defendant, and the affirmation in opposition and memorandum of law of Assistant District Attorney Celia M. Curtis. Upon these submissions, the instant motion is decided as follows:

Pursuant to CPL 220.60(3), the defendant moves the Court to permit him to withdraw the guilty plea he entered before this Court on December 20, 2012 to the crime of Burglary in the first degree pursuant to Penal Law §140.30(4) as charged under Count One of the instant indictment, alleging that his guilty plea was not entered knowingly, intelligently and voluntarily due to his confusion concerning his waiver of his appellate rights, the coercive influence of a family member, his failure to understand the available alternatives to the entry of his guilty plea, and his present claim of innocence. The People oppose the defendant's instant application, asserting that the defendant's guilty pleas were knowingly, intelligently and voluntarily entered.

**FILED**  
FEB 13 2013  
C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

### Findings of Fact

On the morning of December 20, 2012, the defendant was produced before this Court in the Trial Assignment Part,<sup>1</sup> when the defendant's former counsel, Gillian McGoey, Esq., requested an opportunity to conference a possible disposition of the case with the Court and Assistant District Attorney Christine O'Connor . The Court engaged the parties in a side-bar conference, and thereafter, granted former counsel's request to have an opportunity to privately speak with the defendant in the attorney-client conference room adjacent to the courtroom. Subsequent to the completion of former counsel's private conference with the defendant, the Court granted her request for an additional opportunity to conference this matter at sidebar. During this last sidebar conference, former counsel advised the Court that the defendant wished to dispose of the instant indictment upon his entry of a guilty plea to a single count of Burglary in the first degree, upon the People's commitment to accept that plea in full satisfaction of the remaining counts charged thereunder and to recommend that the defendant receive a sentence providing for a determinate term of imprisonment of 11 years in conjunction with 5 years of post-release supervision and the mandatory surcharge and fees. Before concluding this sidebar conference, this Court advised the parties that it would adopt the People's sentencing recommendation.

---

<sup>1</sup>It is significant to note, that although the defendant did not have a Certified Court Interpreter present during this proceeding to provide him with a translation of the court proceedings from the English language to the Spanish language, the defendant gave this Court no indication whatsoever that he desired the services of such an interpreter on any of his prior appearances before this Court on September 27, 2012, November 1, 2012, November 8, 2012 and November 29, 2012.

Upon the completion of the second sidebar conference, the Court addressed the defendant on the record in open court and explicitly advised him of the terms of the proposed plea agreement as discussed during the conference conducted with the People and former counsel. Specifically, the Court related that it understood that the People and the defense had mutually agreed to afford the defendant an opportunity to enter a guilty plea to the crime of Burglary in the first degree as charged under Count One of the instant indictment, in exchange for the Court's commitment to impose a sentence providing for a determinate term of imprisonment of 11 years in conjunction with a 5 year period of post-release supervision. The Court then asked former counsel if this accurately reflected her, as well as the defendant's, understanding of the terms of the proposed plea agreement, which prompted an affirmative response on the record from former counsel as she stood alongside the defendant. The defendant's former counsel then withdrew the defendant's previously entered pleas of not guilty to all counts charged under the instant indictment and entered a guilty plea on the defendant's behalf to Count One charged thereunder. The Court then observed the defendant provide answers, under oath, to the detailed questions asked by Assistant District Attorney O'Connor during her *voire dire* of the defendant in connection with the entry of his guilty plea. The Court also carefully observed the defendant's demeanor and listened to the inflections of his voice throughout these proceedings, noting that the defendant responded to all questions asked of him in a confident and clear manner, without any equivocation or hesitation. Furthermore, the Court's observations of the defendant revealed no indication that he was having any difficulty understanding any of the questions posed to him in the English language, his attorney's advice provided in the English language, nor the Court's advisements and instructions which were provided in the English language.

The Court finds particular significance in the affirmative responses provided by the defendant when he was questioned by Assistant District Attorney O'Connor about his satisfaction with the representation and advice provided by his former counsel in connection with this matter, as well as his indication that he had an adequate opportunity to discuss the consequences of his guilty plea with his former counsel. Of further significance, the defendant also stated that he was pleading guilty because he was, in fact, guilty of the charge to which he was entering his guilty plea, that he understood the Court's sentence commitment and that he did not have any questions about it, that his plea was being entered freely and voluntarily in the absence of any force or coercion, and that no one had made any other promise or representation to him which differed from the Court's sentence commitment. In a very detailed manner, the defendant was then asked a series of questions concerning his understanding of the rights he was waiving through his plea, the consequences of his plea, and the conduct which established his guilt for the commission of the charge which was the subject of his guilty plea. The defendant responded by unequivocally acknowledging his understanding of the rights he was waiving through his plea, including his waiver of his right to appeal his conviction and sentence, as well as the consequences of his plea and his criminal conduct. Finally, the Court notes that following the completion of the defendant's plea allocution, the defendant responded affirmatively when asked if he understood everything that had been placed upon the record regarding the plea agreement. Upon this record, the Court accepted the defendant's guilty plea and scheduled this matter for sentencing on February 14, 2013.

In advance of the imposition of sentence, former counsel contacted the Court directly by telephone on January 4, 2013 and requested that the defendant's case be advanced to January 10,

2013 to address the defendant's privately communicated complaints about her representation and his intention to seek the withdrawal of his guilty plea. This Court advanced the defendant's case to January 10, 2013 and upon providing the defendant with an opportunity to address the Court, granted his request for the assignment of a new attorney, Kevin Griffin, Esq., to represent him in all future proceedings conducted with respect to this case pursuant to County Law §18-b, including consideration of the defendant's request to seek the withdrawal of his previously entered guilty plea. The Court then granted defense counsel's request for an adjournment of the defendant's case until January 17, 2013 in order to afford him an opportunity to discuss this matter with the defendant and determine whether he would be seeking to withdraw the defendant's previously entered guilty plea or would proceed with sentencing. On January 17, 2013, defense counsel filed the underlying motion seeking the withdrawal of the defendant's guilty plea.

#### Conclusions of Law

It is well-settled that a determination concerning an application to withdraw a guilty plea is directed to the sound discretion of the court and may be granted at any time prior to the imposition of sentence (*see* CPL 220.60[3]; *see also* *People v Brown* 14 NY3d 113; *People v Frederick*, 45 NY2d 520; *People v Martin*, 240 AD2d 5, *app. denied* 92 NY2d 856; *People v Elmendorf*, 45 AD3d 858, *lv. denied* 10 NY3d 810). 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). In connection with an application for the withdrawal of a guilty plea, the defendant must be afforded a reasonable opportunity to advance his 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 voluntariness of the defendant's guilty plea (see *People v Ramos*, 63 NY2d 640; *People v Tinsley*, 35 NY2d 926, 927; *People v Palmer*, 29 AD3d 606; *People v Morabito*, 253 AD2d 830).

Turning first to consider the defendant's claims relating to his misapprehension of the terms and consequences of his plea agreement when he entered his guilty plea, same is predicated upon his assertion that he did not realize that he was waiving his rights to appeal his conviction when he entered his guilty plea and that he didn't have enough time to speak with his former counsel about his plea agreement nor available trial strategies. With respect to all of these claims, 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 O'Connor, he indicated that he was satisfied with his former counsel's representation and that he had been afforded an adequate opportunity to discuss the consequences of his guilty plea with her, specifically including his waiver of his rights to appeal his conviction and sentence. Furthermore, the Court notes that the defendant has failed to support these claims of misapprehension with any proof beyond the generalized allegations set forth in his personal affidavit, which is unavailing in the absence of any support appearing in the stenographic record, or contained within an affidavit from former counsel. Accordingly, upon the state of the record presented, the defendant's claims relating to his misapprehension of the terms and consequences of his plea agreement do not merit the vacatur of his guilty plea.

Turning next to consider the claim of innocence raised by the defense in support of the instant application, the defendant offers only the conclusory claim in his affidavit that he is innocent of the crimes with which he is charged under the instant indictment and now wishes to have a trial in this matter. Notably, upon consideration of the defendant's affidavit, the Court notes that the defendant does not assert that his claim of innocence and his desire to have a trial in this matter was disregarded by his former counsel. Rather, the defendant simply claims that he did not understand the various avenues of defense available to him which prevented him from maintaining his innocence. With respect to this claim, 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 O'Connor, he indicated, in substance, that he was entering his guilty plea because he was, in fact, guilty of committing the crime of Burglary in the first degree. Furthermore, when ADA O'Connor questioned the defendant about his specific conduct underlying the crime which was the subject of his guilty plea, the stenographic record of the plea proceedings reflects that the defendant unequivocally admitted to same. Where, as here, the record reveals that the defendant has fully allocuted to the facts concerning his criminal conduct during the proffer of a guilty plea, subsequent conclusory allegations of innocence are insufficient to merit the vacatur of a guilty plea (*see People v Barnett*, 258 AD2d 526, *lv. denied* 93 NY2d 966; *see also People v Suggs*, 220 AD2d 630, *app. denied* 87 NY2d 851; *People v Meyers*, 204 AD2d 492, *app. denied* 84 NY2d 829; *People v Brown*, 251 AD2d 677; *People v Evans*, 204 AD2d 346; *People v Chestnut*, 188 AD2d 480). Accordingly, upon the state of the record presented, the defendant's claim of innocence does not merit the vacatur of his guilty plea.

With respect to the defense claim that the defendant's guilty plea was the product of

coercion and pressure from his wife, the defense relies solely upon conclusory references set forth in the defendant's affidavit wherein it is alleged that the defendant's wife wanted the defendant to avail himself of the plea bargain because she wanted him to avoid the possible risk of receiving a greater sentence if he was convicted after trial. Notably absent from the defendant's affidavit is any reference to any form of coercive conduct by any of the defendant's family members, nor by his former counsel in advance of his entry of his guilty plea in this case. Furthermore, the allegations of coercion raised in the defendant's affidavit are entirely unsubstantiated by the stenographic record of the plea colloquy which reflects that when ADA O'Connor questioned the defendant about whether anyone had threatened, forced or coerced him in any way to plead guilty, the defendant unequivocally denied the existence of such influences. Accordingly, upon the state of the record presented, the defendant's claim of coercion does not merit the vacatur of his guilty plea.

With respect to the defendant's claim that he "did not understand the full extent" of his guilty plea because he had difficulty understanding "terms of art used during the proceedings" and would have benefitted from the assistance of a Spanish interpreter during his plea allocution, the Court notes that the defendant's affidavit completely neglects to identify any specific terms used or referenced during the taking of his plea that he did not understand. Furthermore, the Court also notes that the defendant's conclusory allegations concerning his comprehension claim overlook his failure to request that the Court provide him with the assistance of a Spanish interpreter at any time during the pendency of this case, nor on the date when he entered his guilty plea (*see People v Fioravantes*, 229 AD2d 784, *lv. denied* 89 NY2d 920). Furthermore, the Court's observation of the defendant and the stenographic record of the plea proceedings fails

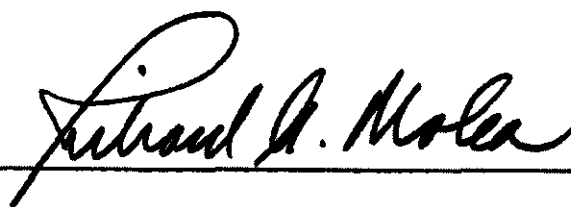
to suggest that the defendant had any difficulty comprehending the English language as spoken during the entry of his guilty plea (*see People v Torres*, 4 AD3d 624, *lv. denied* 2 NY3d 765).

Finally, 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 him by the Assistant District Attorney during the plea colloquy, indicating that he understood the proceedings, the rights he was waiving, the terms of his proposed sentence, and his successful allocution to the pertinent facts of the charge to which he entered his guilty plea, provides significant proof of the knowing and voluntary nature of the defendant's guilty plea (*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 his guilty plea 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  
February 13, 2013



---

Honorable Richard A. Molea  
Acting Justice of the Supreme Court