

People v Figueroa

2014 NY Slip Op 32109(U)

August 8, 2014

Sup Ct, Kings County

Docket Number: 12706/89

Judge: Ruth E. Shillingford

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 27

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THE PEOPLE OF THE STATE OF NEW YORK

By: Hon. Ruth Shillingford
Date: August 6, 2014

-against-

DECISION & ORDER
INDICTMENT NO.: 12706/89

WILLIAM FIGUEROA,

Defendant.

-----X
RUTH SHILLINGFORD, J.:

By *Pro Se* Motion, defendant, an inmate at the Green Haven Correctional Facility, moves pursuant to CPL § 440.30(1-a)(a), for an order permitting him to develop expert testimony in the area of false confessions or in the alternative, for a hearing, with respect to his motion to vacate his judgment of conviction, entered on or about March 13, 1991, following a jury trial, convicting him of, *inter alia*, Murder in the Second Degree (PL § 125.25[2]) and Criminal Possession of a Weapon in the Second Degree (PL § 265.03), and sentencing him, as a second felony offender, to consecutive sentences of twenty-five years to life, three and one-half to seven years, seven and one-half to fifteen years, and three and one-half to seven years, respectively.¹

PROCEDURAL HISTORY

The motion pending before this court is one of several that defendant has filed in repeated attempts to vacate his sentence or set aside the verdict. In his current motion, defendant again urges this Court to grant a hearing on the grounds that, *inter alia*, he is actually innocent; and to

¹Defendant has filed numerous “motions” or replies related to his initial motion since its February 14, 2013 filing.

permit him to explore expert testimony in the area of false confession, as he continues to argue that his pre-trial confession was coerced as a result of suggestive procedures and techniques. .

Defendant's claim of actual innocence is again predicated, in substantial part, on the affidavits of Osvaldo Rodriguez. Defendant filed a motion to vacate his judgment of conviction on January 11, 2011, arguing, *inter alia*, that his conviction should be vacated based upon actual innocence and newly discovered evidence. His motion was denied by Decision and Order dated January 20, 2012 (Shillingford, J.). In its decision, this Court ruled, *inter alia*, that it did not "credit the affidavit of Osvaldo Rodriguez," that defendant had "failed to provide a meritorious explanation for his delay in obtaining [the] affidavit," and that his claims relating to any alleged *Miranda* violations were barred. Defendant subsequently filed a motion to renew/reargue the aforementioned Decision urging that the court was mistaken in its decision and that he had in fact exercised due diligence in obtaining the affidavit. By Decision and Order dated July 3, 2012 (Shillingford, J.), the Court denied defendant's motion.

DISCUSSION

On February 13, 2014, this Court issued an interim order and held a decision on defendant's motion in abeyance pending submissions by the parties, on the issue of the applicability of *People v. Hamilton*, 115 AD3d 12 (2nd Dept. 2014), which, for the first time, recognized a freestanding claim of actual innocence under CPL § 440.10(1)(h).

The People contend that defendant is not entitled to a hearing because "such flimsy evidence as [he] offers does not rise to the level of the showing made in *Hamilton*" (Second Supplemental Affirmation at 3). Specifically, they argue, *inter alia*, that the affidavits of

Oswaldo Rodriguez “do not bear any assurances of reliability, even if assessed leniently;” “defendant has not made any credible showing that Manuel Crespo, the alleged declarant in the affidavits ... is unavailable or unwilling to supply his own sworn statement attesting to the allegations asserted;” and that he “offers no corroboration for the purported involvement of Manuel Crespo in the death of Maria Hernandez” (*id.* at 7 and 10).

Defendant avers that “Mr. Oswaldo Rodriguez may testify under oath subject to cross-examination - which relates certain information that Manuel Crespo was the actual killer of this murder, as it is based on matters that are not on the record and could only be developed through a new evidentiary hearing so the full factual background of Oswaldo Rodriguez that Manuel Crespo ‘bragged about’ or ‘confessed’ to the murder of Maria Hernandez can be developed” (4/15/14 Reply ¶ 16). Finally, he claims that his “confession was the centerpiece of the prosecution case” and argues that new case law supports his argument that his “marathon interrogation [session] was inherently coercive and ran afoul of [his] constitutional right to a fair trial” (*id.* at ¶¶ 17-18).

It is “well settled that ‘actual innocence’ means factual innocence, not mere legal sufficiency of evidence of guilt ... and must be based upon reliable evidence which was not presented at trial” (*People v. Hamilton*, 115 AD3d at 105). “A *prima facie* showing of actual innocence is made out when there is ‘a sufficient showing of possible merit to warrant a fuller exploration’ by the court” (*id.* at 27, quoting *Goldbum v. Klem*, 510 F3d 204, 219 [2002], *cert denied* 555 US 850 [2008], quoting *Bennett v. United States*, 119 F3d 468, 469 [7th Cir. 1997]). Defendant has failed to make such a showing.

In that regard, he repeatedly points to the alleged confession of Manuel Crespo, as asserted by fellow inmate, Osvaldo Rodriguez. As mentioned above, this Court has previously reviewed and declined to credit the affidavits of this purported witness (*see* 1/20/12 Decision and Order; 7/3/12 Decision and Order [Shillingford, J.]).

Upon reviewing defendant's claims and these affidavits within the context of *Hamilton*, this Court again rejects them and denies defendant's request for a hearing. The sum and substance of Manuel Crespo's alleged confession is that he and two others were involved in the death of Maria Hernandez. Specifically, it is alleged that "one of [the three men] stood at the corner watching for the police, while Crespo and the other person walked the block of Star (sic) street" and that "[t]heir intention was not to kill anybody, but to scared (sic) Hernandez into moving out of the apartment" (*see* 4/9/13 Affidavit of Osvaldo Rodriguez annexed to Defendant's 4/30/13 Reply).

These allegations are belied by the evidence presented at trial, which included the testimony of Antonio Duran, a passenger who was present with defendant in the vehicle used during the shooting. Duran's testimony was corroborated not only by defendant's video and audio taped statements, but by the testimony of Carlos Hernandez that a car was observed leaving the scene shortly after the shooting (*see* 1/11/91 Transcript at 71). Antonio Duran's later recantation was deemed to be unreliable, after a hearing, by a Justice of this Court, and therefore his testimony remains uncontroverted. The court finds the uncorroborated allegations of Manuel Crespo incredible in light of the strong evidence of defendant's guilt.

The assertions in these affidavits are duplicative and similarly are not credited by this

Court. Furthermore, the court notes that any new information contained in the April 9, 2013 Affidavit should and could have been included in the numerous affidavits already submitted by defendant, some from the very same affiant, and included in his previously filed CPL § 440 motions. Defendant has failed to provide a meritorious explanation for his delay in obtaining this affidavit and is therefore barred pursuant to CPL § 440.10[3][c]. Defendant's motion for a hearing is therefore denied, as defendant has failed to make a *prima facie* showing of actual innocence.

Defendant also cites to *People v. Bedessie*, 19 NY3d 147 (2012), in support of his request for a hearing. He argues that, “[a]t trial and prior to his conviction in 1991, the admission of false confession expert testimony had not yet become an integral part of the criminal justice system...[and that he] simply aims to take advantage of the phenomenon of false confessions progress and introduce expert testimony on that phenomenon” (2/14/13 Affirmation ¶¶ 20-21).

To begin, CPL § 440.30(1-a)(a), upon which defendant relies, is applicable where a defendant “requests the performance of a forensic DNA test on specified evidence, and upon the court’s determination that any evidence containing deoxyribonucleic acid (‘DNA’) was secured in connection with the trial resulting in the judgment...” There is no such claim here.

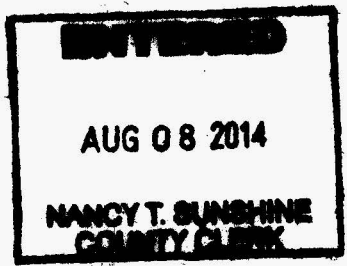
It is true that the *Bedessie* court recognized that an expert in the field of false confessions “may offer valuable testimony to educate a jury about those factors of personality and situation that the relevant scientific community considers to be associated with false confessions” (*People v. Bedessie*, 19 NY3d 147, 161 (2012)). It lends no support in this instance, however, where, the record reveals that the issues regarding defendant’s claim that his confession was

obtained as a result of malfeasance on the part of the police has been litigated extensively during pre-trial hearings, trial, on direct appeal and in subsequent post judgment motions. Additionally, other than his self-serving assertions, defendant has failed to demonstrate that had such testimony been produced at trial, the verdict would have been more favorable to the him (see CPL § 440.10[1][g]; *People v. Salemi*, 309 NY 208 [1955]). Defendant is therefore mandatorily barred pursuant to CPL §§ 440.10(2)(a) and (3)(b).

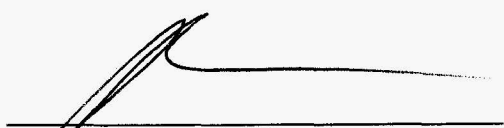
Accordingly, defendant's motion and all supplemental motions and requests are denied, without a hearing.

CONCLUSION

Based upon the foregoing reasons, the Court denies defendant's motion in its entirety. This Decision shall constitute the Order of the court.



E N T E R,



 Ruth Shillingford, A.J.S.C.

You are advised that your right to an appeal from the order determining your 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 Article 440, you 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 your being served by the District Attorney or the court with the court order denying your motion.

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. Upon proof of your financial inability to retain counsel and to pay the costs and expenses of the appeal, you 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 certification granting leave to appeal is granted.²

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²22 NYCRR § 671.5 .