

People v Munford

2014 NY Slip Op 32149(U)

July 1, 2014

Supreme Court, Kings County

Docket Number: 1958/03

Judge: Thomas J. Carroll

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SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY, CRIMINAL TERM, PART 24

PEOPLE OF THE STATE OF NEW YORK

Indictment No.: 1958/03

against

By: Hon. Thomas J. Carroll

ANTHONY MUNFORD,

Dated: June 27, 2014

Defendant

The defendant, pro se, has filed a motion to vacate his conviction by plea and sentence citing CPL §§ 440.10(1)(a)(b)(h), 440.20(1) and 440.30(1)(3)(5)(6). The People oppose. In deciding this motion, the court has considered the motion papers, the People’s opposition which included portions of the grand jury minutes¹, the defendant’s rebuttal and the court file. For the following reasons, defendant’s motion is denied.

The background of this case can be found in the decisions related to defendant’s prior appeal (*People v Munford*, 37 AD3d 855 [2d Dept 2007]) and two related writs of error coram nobis (*People v Munford*, 46 AD3d 922 [2d Dept 2007] and 71 AD3d 920 [2d Dept 2010]) and the several motions he brought under CPL §§ 440.10 and 440.20 and a federal writ of habeas corpus.

The substance of defendant’s allegations is the following. 1. The defendant alleges that he is actually innocent because he found the two firearms “shortly before his possession of them” was discovered and that he intended to turn them over to the authorities. While he notes that he so testified in front of the Grand Jury, he claims that prior to pleading guilty his plea counsel did not tell him that he had an affirmative defense of temporary and lawful possession and that if he

¹ Due to the confidential nature of the grand jury proceedings, the minutes submitted are being returned to the Office of the District Attorney.

had known about this defense, he would not have accepted his plea counsel's advice to plead guilty. He further claims that due to his lack of knowledge, his guilty plea was not knowing, intelligent or voluntary. Defendant also alleges that counsel's failure to inform him of this defense deprived him of the effective assistance of counsel. 2. Defendant further alleges that he was deprived of the effective assistance of counsel due to counsel's failure to move to inspect the grand jury minutes after becoming aware of defendant's grand jury testimony and prior to advising defendant to plead guilty. 3. Defendant also alleges that the appeal waiver was invalid. 4. Defendant also alleges that the New York State violent felony offense statute, Penal Law § 70.02(1)(c), is unconstitutional to the extent that it designates conduct proscribed by Penal Law § 265.02(4) as a violent offense.

Defendant's claims of actual innocence and plea counsel ineffectiveness fail. "In the context of a guilty plea, a defendant has been afforded meaningful representation when he or she receives an advantageous plea and nothing in the record casts doubt on the apparent effectiveness of counsel." *People v Ford*, 86 NY2d 397, 404 [1995]. Moreover, defendant "must overcome the strong presumption" that he was represented competently (*People v Ivanitsky*, 81 AD3d 976 [2d Dept 2001]; *People v Myers*, 220 AD2d 461 [2d Dept 1995]). Under the federal standard, criminal defendants have a Sixth Amendment right to "reasonably effective" legal assistance (*Strickland v Washington*, 466 U.S. 668, 687 [1984]) and must rebut a strong presumption of competency by showing that counsel's conduct was outside the "wide range of professionally competent assistance" (*id.* at 690) and "fell below an objective standard of reasonableness" (*id.* at 688). A defendant must also establish that he was sufficiently prejudiced by counsel's performance by demonstrating that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" (*id.* at 694). "No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety

of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant” (*id.* at 688-689). Rather, the reasonableness of counsel’s conduct must be evaluated from counsel’s perspective on the facts of the particular case as of the time of the challenged conduct and in light of all the circumstances (*id.* at 690). Every effort must be made “to eliminate the distorting effects of hindsight” and the standard of review must be highly deferential (*id.* at 689). Here, defendant received a highly advantageous plea. Given the serious nature of the charges, and his qualifying as a persistent violent felony offender, the maximum term to which the defendant could have been sentenced was twenty-five years to life.

Furthermore, defendant’s assertions that he found the two firearms “shortly before” his possession of them and actual innocence are contradicted by his own written statement to police officers to the effect that he was given one by a person to hold “about six months” ago and the other he bought “last year” to protect himself and his family.

Defendant’s testimony before the grand jury, in the presence of a different attorney, was consistent with the theory of temporary and legal possession. The grand jury was charged on that theory and obviously rejected it by indicting the defendant. The fact that he so testified before the grand jury suggests that he knew about this theory before he was actually indicted and before he plead guilty. Furthermore, by written decision dated July 29, 2003, another justice of this court reviewed the grand jury minutes and deemed them legally sufficient. In addition, the reviewing court found that the People “correctly charged the Grand Jury with respect to the applicable law.” (Firetog, J.). Defendant’s current argument as to counsel’s failure to make a motion to inspect the grand jury minutes fails.

Moreover, defendant’s approximately nineteen year delay in filing the instant motion severely weakens the credibility of his claims. The New York State Court of Appeals has held that “revelatory of the seriousness of defendant’s present claims, is that defendant waited over a

decade before asserting them. In stale cases, defendants have all to gain by reopening old convictions, retrial being so often an impossibility. These are factors to consider in determining how valid the assertions are... ." (*People v Nixon*, 21 NY2d 338, 352 [1967]). Thus, a lengthy delay can be considered in evaluating the validity and legitimacy of a post-judgement claim (*People v Melio*, 304 AD2d 247, 252 [2d Dept 2003]; *People v Hanley*, 255 AD2d 837, 838 [3d Dept 1998]).

Contrary to the defendant's contentions, he was not deprived of the effective assistance of counsel under the New York constitution. Viewing defense counsel's performance in totality, counsel provided meaningful representation. Further, the defendant was not deprived of the effective assistance of counsel under the United States Constitution.

The validity of the appeal waiver was upheld by the Appellate Division, Second Department, in *People v Munford*, 37 AD3d 855 (2007).

Defendant was in a position to adequately raise the issue regarding the New York State violent felony offense in a previous motion.

Defendant was in a position to raise these allegations in his previous motions. CPL §§ 440.10(3)(c) and 440.30(1). In addition, his allegations regarding inspection of the grand jury minutes and the appeal waiver were previously determined. CPL §§ 440.10(2)(a) and (3)(b)

Accordingly, defendant's motion is denied in all respects.

This constitutes the decision and order of the Court.

ENTER:

ENTERED
 JUL - 1 2014
 NANCY T. SUNDHEIM
 COUNTY CLERK

Thomas J. Carroll
 HON. THOMAS J. CARROLL
 THOMAS J. CARROLL
 J. S. C.

The defendant is hereby advised pursuant to 22 NYCRR § 671.5 of his right to apply to the Appellate Division, Second Department, 45 Monroe Place, Brooklyn, New York 11201, for a certificate granting leave to appeal from this determination. This application must be made within 30 days of service of this decision. Upon proof of his financial inability to retain counsel and to pay the costs and expenses of the appeal, the defendant 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.