

People v Quinones

2014 NY Slip Op 32196(U)

May 12, 2014

Sup Ct, Kings County

Docket Number: 2584/04

Judge: John G. Ingram

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM, PART 21

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THE PEOPLE OF THE STATE OF NEW YORK, DECISION AND ORDER

-against-

Indictment No. 2584/04

GEORGE QUINONES,
Defendant.

-----X

INGRAM, J.

Defendant stands convicted, in Supreme Court, Kings County, on January 13, 2005 of Burglary in the Third Degree. On May 11, 2005, Defendant appeared for the persistent felony offender hearing and for the imposition of sentence. After the hearing, this Court found that the People had satisfied their burden of proving that Defendant was a persistent felony offender. This Court sentenced Defendant, as a persistent felony offender, to a prison term of eighteen years to life. (Ingram, J., trial and sentencing).

On March 9, 2007, Defendant filed a brief in the Appellate Division, Second Department, appealing his judgment of conviction. Defendant made the following claims: (1) the police lacked reasonable suspicion to stop Defendant; (2) the police unlawfully searched Defendant's bag; (3) Defendant's trial attorney was ineffective for failing to challenge the lawfulness of the police search of Defendant's bag; and (4) Defendant's sentencing as a persistent felony offender violated Defendant's constitutional right to a jury trial. By order dated November 27, 2007, the Appellate Division affirmed Defendant's judgment of conviction. People v. Quinones, 45 A.D.3d 874 (2d Dept. 2007). The Appellate Division held that the police had reasonable suspicion to stop

Defendant; that Defendant's claim that the police unlawfully searched Defendant's bag was meritless and Defendant's sentencing as a persistent felony offender did not violate the Federal Constitution. Quinones, 45 A.D.3d at 874-75.

Defendant applied for permission to appeal to the New York Court of Appeals. By order dated March 31, 2008, the Court of Appeals granted Defendant's application. People v. Quinones, 10 N.Y.3d 815 (2008)(Ciparick, J.). Defendant raised the following three claims before the Court of Appeals: (1) the police lacked reasonable suspicion to stop Defendant; (2) Defendant's trial attorney was ineffective for failing to challenge the police search of Defendant's bag; and (3) Defendant's sentencing as a persistent felony offender violated his constitutional right to a jury trial. On February 24, 2009, the Court of Appeals affirmed the Appellate Division's order. People v. Quinones, 12 N.Y.3d 116 (2009)(Jones, J.). The Court of Appeals held that the police had reasonable suspicion to stop and search Defendant. Quinones, 12 N.Y.3d at 121. The Court stated that they were unable to determine that trial counsel was ineffective. Id. at 122. The Court also ruled that Defendant's sentencing as a discretionary persistent felony offender did not violate Defendant's right to a jury trial. Id. at 122-23.

Defendant petitioned the United States Supreme Court for a writ of certiorari. On October 5, 2009, the Supreme Court denied Defendant a writ of certiorari. Quinones v. New York, 558 U.S. 821 (2009). On September 30, 2010, Defendant sought a writ of habeas corpus in the United States District Court for the Eastern District of New York, which was denied on June 27, 2012. Quinones v. Lee, 2012 WL 2564370 (E.D.N.Y. 2012)(Garaufis, U.S.D.J.).

On October 1, 2013, Defendant filed motion pursuant to C.P.L. § 440.10 to vacate his judgment of conviction, on the ground that he was denied the effective assistance of counsel, in that

defense counsel, Cedric Gayle, Esq., failed to challenge the lawfulness of the People's pretrial plea offer, failed to advise Defendant about the People's plea offer or give advice about whether or not to accept the plea offer and the Court erred, by failing to conduct a formal inquiry on the record into whether Defendant knowingly, voluntarily, and intelligently rejected the People's pretrial plea offer. The People filed their papers in opposition on February 7, 2014.

Defendant alleges that his counsel should have challenged the lawfulness of the People's pretrial plea offer. The People offered Defendant a plea to one count of Attempted Burglary in the Second Degree and a sentence as a mandatory persistent violent felony offender of twelve years to life imprisonment. While Defendant alleges this plea was illegal, this Court finds the plea was lawful. On the date of Defendant's crime, April 21, 2004, Defendant was classified as a mandatory persistent violent felony offender. He had two prior convictions for violent felony offenses and his present offense was a violent felony offense. Under the law in effect on April 21, 2004, the minimum period of imprisonment for a mandatory persistent violent felony offender convicted of a class D violent offense, such as Attempted Burglary in the Second Degree, was twelve years, but could not exceed twenty-five years. See P.L. § 70.08(3)©. The maximum period of imprisonment for a mandatory persistent violent felony offender who stood convicted of a class D violent felony offense was life imprisonment. See P.L. § 70.08(2). Therefore, the People's offer of twelve years to life on a plea to Attempted Burglary in the Second Degree was lawful and Mr. Gayle was not ineffective for not opposing the plea.

While it is clear from the record that Defendant was present in Court when the People made the offer, Defendant alleges that defense counsel never explained the People's offer to him or advised him with respect to the plea offer and his representation was ineffective. The People stated

in their papers that they could not locate Mr. Gayle. According to the ADA, Mr Gayle was listed in the Attorney Registration Directory as being employed by the Legal Aid Society. However, the People spoke to a receptionist at the Legal Aid Society and she stated that he was no longer employed there.

Under New York law, the constitutional requirement of effective assistance of counsel is satisfied when “...the evidence, the law and the circumstances of a particular case, viewed in totality, and as of the time of the representation, reveal that the attorney provided meaningful representation...” People v. Benevento, 91 N.Y.2d 708, 712 (1998). “Meaningful representation by counsel includes the conveyance of accurate information regarding plea negotiations, including relaying all plea offers made by the prosecution...”. People v. Rogers, 8 A.D.3d 888, 890 (3rd Dept. 2004). It is settled law that “... to prevail on his claim that he was denied effective assistance of counsel, defendant had the burden to demonstrate that a plea offer was made, that defense counsel failed to inform him of that offer, and that he would have been willing to accept the offer.” People v. Fernandez, 5 N.Y.3d 813, 814 (2005).

The federal standard for establishing that a defendant was provided with less than meaningful representation is somewhat different from the law of New York. See Strickland v. Washington, 466 U.S. 668 (1984). The Supreme Court decided two cases that specifically addressed the importance of effective assistance of counsel in plea negotiations. Lafler v. Cooper, 132 S.Ct. 1376 (2012); Missouri v. Frye, 132 S.Ct. 1399 (2012). In Lafler, the Court stated that “Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process.” 132 S.Ct. at 1384. Likewise, in Frye, the Supreme Court emphasized the fact that a criminal defendant must have effective assistance of counsel during the critical stage of plea negotiations under the Sixth

Amendment and that “claims of ineffective assistance of counsel in the plea bargain context are governed by the two-part test in Strickland...”. Frye, 132 S.Ct. at 1407-08. There is still a requirement that the defendant show prejudice and that he would have accepted an offer prior to trial. The defendant must also show that but for the ineffective advice, the Court would have accepted the offer. People v. Verni, 35 Misc.3d 1204 (Sup. Ct. Queens Co. 2012).

Defendant has not established that he was denied his constitutional right to effective assistance of counsel pursuant to the holding of Missouri v. Frye, based on his assertion that the plea offer was not conveyed to him. 132 S.Ct. 1399 (2012). In the instant case, it is undisputed that the People made an offer of a plea agreement involving a sentence of imprisonment of twelve years to life at least twice and Defendant was present in court when said offers were conveyed. The court transcripts indicate that the offer was conveyed in open court in the presence of Defendant on at least two separate dates, August 18, 2004 and on January 11, 2005. Since this Court finds that Defendant has not established that defense counsel failed to convey a plea offer to him, it finds that Defendant failed to establish the first prong of Strickland as set forth in Missouri v. Frye.

Even if this Court were to find that Defendant established the first prong of Strickland, this Court would find that Defendant failed to establish the second prong because the hearing testimony failed to establish that Defendant would have accepted a plea offer. The holding of Missouri v. Frye, requires not only a finding of counsel’s failure to convey a plea, but also finding that if it had been conveyed, there is a reasonable probability the defendant would have accepted it. 132 S.Ct. 1399 (2012). The transcripts demonstrated that Defendant knew he was facing serious felony charges and jail time. Defendant’s claim that he would have taken the plea if he was informed of it is belied by the record. The plea was conveyed in open court at least twice and Defendant offered no rational

explanation as to why he would stand silent while his attorney did not accept the offer conveyed by the People. In addition, this Court spoke, at length, to Defendant, on the record, about the consequences of going to trial and Defendant never expressed any confusion over anything that was said. Furthermore, this was not Defendant's first time to come into contact with the criminal justice system. Defendant has had approximately ten prior convictions and has plead guilty in prior cases. He is familiar with court proceedings and the plea bargaining process. It is difficult for this Court to believe that if Defendant wanted this plea, he would have remained silent. Defendant had a strong reason not to enter a guilty plea in this case. The People's plea offer included a maximum prison term of life imprisonment. Therefore, if Defendant accepted the People's plea, Defendant potentially could spend the rest of his life in prison. However, if Defendant went to trial, there was a chance Defendant could have avoided life imprisonment. Therefore, Defendant had compelling reasons to reject the plea and proceed to trial.

In addition, in order for Defendant to have accepted this plea, Defendant would have had to accept responsibility for this crime. It is clear, from the record, that Defendant never accepted responsibility for this crime. During his interview with the Department of Probation after he was convicted, Defendant denied his guilt and stated he did not commit this offense. While Defendant claims in his motion that he would have plead guilty, it is clear that Defendant was not ready to accept responsibility for this crime, a requirement in this case for entering in to a plea of guilty.

Defendant further alleges that this Court should have questioned Defendant as to whether he rejected the People's plea offer. However, as held by the United States Supreme Court and under New York State law, there is no constitutional right of the defendant to a plea offer. Weatherford

v. Bursey, 429 U.S. 545 (1977). Therefore, it follows that the court does not bear the burden of determining whether a defendant understands his rejection of a plea..

Accordingly, Defendant's motion to vacate his judgment of conviction upon the ground that he was denied effective assistance of counsel is denied.

This opinion constitutes the Decision and Order of this Court.

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.

Dated: May 8, 2014
Brooklyn, New York

