

People v Brummel

2014 NY Slip Op 32846(U)

October 28, 2014

Sup Ct, Kings County

Docket Number: 6200/04

Judge: Deborah A. Dowling

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MEMORANDUM

SUPREME COURT: KINGS COUNTY
(Criminal Term, Part 1)

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PEOPLE OF THE STATE OF NEW YORK,

DECISION AND ORDER
By: Justice Deborah A. Dowling

-against-

Dated: October 28, 2014

Indictment No: 6200/04

TEON BRUMMEL,
Defendant(s).
-----X

The defendant submitted the instant motion seeking an Order to vacate his conviction pursuant to Criminal Procedure Law §440.10(1)(g) and (h). The defendant argues his conviction and sentence should be set aside because his constitutional rights were violated. The defendant contends trial counsel failed to provide effective assistance of counsel during the course of his trial.

Specifically, the defendant argues trial counsel's failure (1) to object to testimony relating to statements he provided about this incident while medicated; (2) trial counsel's failure to challenge a search warrant which allowed the prosecution to procure knives and a barbell, introduced as the murder weapon; (3) trial counsel's failure to argue that the defendant's speedy trial rights were violated; (4) trial counsel's failure to argue that the People committed Brady violations by its failure to turn over information from a doctor who

believed the defendant was incapable of making a voluntary statement and (5) trial counsel's failure to argue that the defendant's due process rights were violated when the People provided information about a search warrant which was executed until after the trial was underway amounted to ineffective assistance of counsel. The People opposed the defendant's motion. For the reasons stated herein the defendant's motion is denied in its entirety.

PROCEDURAL HISTORY

On November 22, 2010, the defendant was convicted of one count of Murder in the Second Degree (PL §125.25(1)) and three counts of Criminal Possession of Weapon in the Fourth Degree (PL §265.01(1)). The defendant was sentenced to 25 years to life imprisonment for stabbing his girlfriend, Natasha Southerland to death. The trial testimony revealed the defendant had a contentious relationship with the victim during the course of their relationship and it culminated in a stabbing death of Ms. Southerland, on September 20, 2004.

The defendant appealed his sentence and conviction however, the Appellate Division denied the defendant's appeal, finding there was overwhelming evidence of the defendant's guilt and no evidence the defendant was deprived of effective assistance of counsel under the New York State constitution and the United States Constitution. *See People v. Brummel*, 103 A.D.3d 805 (2nd Dept 2013).

The defendant also sought leave to appeal the Appellate Division decision. On May

15.2013, the New York State Court of Appeals denied the defendant's leave to appeal. *See People v. Brummel*, 21 N.Y3d 941 (2013). The defendant now moves herein seeking to vacate his conviction based on the contention that his attorney failed to provide effective legal representation.

CONCLUSIONS OF LAW

The question presented is whether there exists a legal basis to vacate the defendant's judgment of conviction. However, there is no merit to the claims raised herein by the defendant. The defendant contends his right under the New York State constitution and the United States constitution to effective assistance of counsel was denied during the course of his trial.

The defendant contends he has established the two prong test set forth, in *Strickland v. Washington*, 466 US 668 (1984). Namely, defense counsel's representation fell below an objective standard of reasonableness and there is a reasonable probability, but for counsel's errors, the proceeding(s) would have resulted in a different outcome. *Strickland v. Washington*, 466 US 668 (1984). The *Strickland* analysis requires any judicial scrutiny brought to bear upon defense counsel's performance be highly deferential in an effort to avoid the distorting effects of hindsight. *Id.*

New York State jurisprudence dictates that trial tactics which terminate unsuccessfully do not automatically indicate ineffective representation. *People v. Baldi*, 54 N.Y.2d 137 (1981). "So long as the evidence, the law and the circumstances of a particular

case, viewed in totality, as of the time of the representation, reveal that the attorney provided meaningful representation, the constitutional requirement will have been met. *Id* at 147.

The court is required to evaluate claims of ineffectiveness without confusing real ineffectiveness with circumstances amounting to nothing more than losing tactics employed by trial counsel. The defense strategy under review upon a claim of ineffectiveness need only reflect a reasonable and legitimate strategy under the particular circumstances of the subject case. A defense theory which is ultimately a losing theory does not amount to ineffective assistance of counsel. It is only when the evidence presented, on a motion of ineffective assistance of counsel, clearly establishes trial counsel partook in an inexplicable prejudicial course of conduct will courts deem the representation ineffective. *People v. Benevento*, 91 NY2d 708 (1998).

In applying either the *Strickland* standard or New York State analysis, the defendant failed to establish entitlement to the relief requested. In the instant case, it is clear the defendant has failed to meet the two-prong test of *Strickland*. The claims raised by the defendant do not rise to the level of an inexplicable prejudicial course of conduct on the part of trial counsel. The defendant failed to establish that but for the actions of trial counsel the results of the proceedings would have been different. Namely, the claims regarding the introduction of the defendant's statement during his hospitalization were fully litigated and argued by trial counsel. The facts adduced during the defendant's trial controvert any claims by the defendant. The evidence presented during the trial established the defendant's

overwhelming guilt and nothing presented in the defendant's moving papers and reply papers serve to negate that fact. A fact which is underscored by the Appellate Division Second Department, which also found overwhelming evidence of the defendant's guilt.

The defendant's claim that trial counsel was ineffective for failing to request a probable cause hearing relating to the search warrant which produced the murder weapon is without merit. There is no basis that such an argument would have been successful and the evidence presented established trial counsel litigated this issue during the course of the trial and adequately cross examined witnesses with regard to evidence recovered in this matter. Additionally, the defendant's claim regarding a failure to set forth speedy trial objections is equally without merit. The defendant failed to establish such an argument would have been successful. Further, the record reflects much of the delay in the trial of this matter was occasioned by the defendant's mental health condition and treatment at a mental facility.

Similarly, the defendant's due process claims are also without merit. The People adequately provided the defendant with information regarding the doctor who believed the defendant was not in a position to make a voluntary statement when questioned by a detective at the hospital. Any perceived failure by trial counsel to utilize this information does not rise to the level of ineffective assistance of counsel.

All of the claims raised by the defendant herein were considered at the time of trial. Trial counsel made vigorous objections regarding the claims raised herein as well as timely and adequate objections to evidence presented by the prosecution for introduction at trial.

The legal determination is whether trial counsel's conduct constituted egregious and prejudicial error such that the defendant did not receive a fair trial. There is no view of the evidence which establishes that trial counsel engaged in egregious or prejudicial conduct. The evidence presented establish the defendant received a fair trial with the benefit of effective competent and skilled representation.

Moreover, as the trial court, having viewed the evidence first hand, there is a little doubt the claims raised by the defendant would have served to change the jury's verdict. Accordingly, there is no basis to find trial counsel acted in manner which was ineffective as a matter of law. Accordingly, the defendant's motion is denied in its entirety. It is hereby,

ORDERED, the defendant's motion is denied. It is further,

ORDERED, the defendant's right to appeal from this order 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. It is further,

ORDERED, 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 following parties;

APPELLATE DIVISION, 2ND Department
45 Monroe Place
Brooklyn, NY 11201

Kings County Supreme Court
Criminal Appeals
320 Jay Street
Brooklyn, NY 11201

Kings County District Attorney
Appeals Bureau
350 Jay Street
Brooklyn, NY 11201

This shall constitute the decision and order of this Court.



Deborah A. Dowling, J.S.C

