

People v Manson

2014 NY Slip Op 33041(U)

November 12, 2014

Supreme Court, Kings County

Docket Number: 10229/2000

Judge: Evelyn J. Laporte

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 38

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THE PEOPLE OF THE STATE OF NEW YORK,	:	
	:	Ind. No.: 10229/2000
	:	
-against-	:	By: Hon. Evelyn Laporte
	:	
	:	Date: November 12, 2014
	:	
THURMAN MANSON,	:	
	:	
Defendant	:	
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The defendant has filed a motion *pro se* pursuant to C.P.L. §440.10 to vacate his judgment of conviction on the following grounds: 1) that the prosecution failed to prove the defendant's guilt beyond a reasonable doubt; 2) that his statements were made under duress and coercion and should have been precluded as being involuntarily made; 3) he received ineffective assistance of counsel because his attorney did not preserve for appellate review the issues he raises in this motion; 4) the assistant district attorney who took his videotaped statement made false promises and deceived him into making a false confession; and 5) during the jury's deliberations, the judge who presided at defendant's trial improperly instructed the jury not to speculate about other theories of how the death in this case occurred. The People argue that all of defendant's claims are procedurally barred and are meritless.

In this case, the jury credited the prosecution's theory. It found that the defendant shot and killed his father during an argument over the fact that defendant did not have a job and owed money to his father, and that defendant had brought a handgun into their shared apartment, against his father's wishes. The day after the shooting, defendant used a credit card belonging to

his deceased father to purchase over \$5,000 worth of merchandise from the Home Shopping Network.

The police were alerted to investigate by concerned relatives who had been unable to reach the deceased for a few days. When the police entered the apartment, they found defendant's father dead on the floor with a gunshot wound to the back of his head, and found the defendant lying face down on the floor in another bedroom. The defendant was shaken by an EMT and then stated that he had been pushed from behind and knocked unconscious when he returned to the apartment. He was then treated by the EMT and subsequently taken to Brookdale Hospital, even though he was not bleeding and had no bruises or apparent injuries. All test results including a CAT scan of his brain and X-rays of his spine were normal. There was no visible trauma to any part of defendant's body.

Upon his release from the hospital, the defendant, who the police continued to view as a victim, was brought to the 67th Precinct to be interviewed. During the course of the night, his story changed and at 7:00 a.m., the defendant told the detectives that he and his father had argued over a gun. Defendant received *Miranda* warnings and waived his rights prior to continuing the interview. Defendant then revealed the information about the tension between himself and his father over his lack of employment, as well as having brought the gun into the house. Defendant claimed that he and his father had a physical fight, that his father punched and hit him, and then the gun went off and his father accidentally shot himself during the struggle. Defendant substantially repeated this version of the incident when he gave a videotaped statement to Assistant District Attorney Kin Ng.

The defendant was convicted on February 19, 2002 of Murder in the Second Degree (P.L. §125.25[1]) and Criminal Possession of a Weapon in the Second Degree (P.L. §265.03[2]), and

on March 18, 2002, he was sentenced to two concurrent terms of imprisonment of twenty-two years to life for the murder conviction, and twelve years for the possession of a weapon.

On direct appeal to the Appellate Division, Second Department, the defendant argued that the court improperly responded to a jury note without notifying the parties of its existence, and that the court improperly instructed the jury during its deliberations that it should not speculate nor should it consider any other theory of the case except for the defense theory of accidental shooting or the prosecution theory of intentional murder.

The Second Department affirmed the conviction and found that contrary to the defendant's contention, the trial court properly instructed the jury not to speculate and further, the claim that the parties were not informed about the jury note was unpreserved for appellate review. (*People v. Manson*, 8AD3d 499 [2nd Dept 2004]).

On July 11, 2005, the defendant filed a writ of *habeas corpus* in the Eastern District of New York, raising the same claim regarding the trial court's jury instruction. The petition was denied. The defendant was also denied a certificate of appealability. (*Manson v. Haponik*, 05-CV-3412 (BMC), 2007 US Dist. LEXIS 51934 [EDNY 2007]).

Defendant now makes several claims, including his first claim that the prosecution failed to prove his guilt beyond a reasonable doubt. The record provides a clear basis for review of this claim by an appellate court, yet the defendant did not raise it on his direct appeal. This Court is therefore mandatorily barred from considering the claim pursuant to C.P.L. §440.10(2)(c) which states, in pertinent part:

“The court must deny a motion to vacate a judgment when... although sufficient facts appear on the record of the proceedings underlying the judgment to have permitted, upon appeal from such judgment, adequate review of the ground or issue raised upon the motion, no such appellate review or determination occurred owing to the defendant's unjustifiable failure... to raise such ground or issue upon an appeal actually perfected by him.”

If the Court were to reach the merits of defendant's claim, the Court would deny the claim and find that there was overwhelming proof of defendant's guilt in this case, including his statements, the testimony of the medical examiner, the bloody evidence recovered in the apartment along with two pillows containing bullet holes and gunshot residue, and the evidence of the defendant's subsequent spending spree after his father's death.

Defendant's second claim that his statements were made under duress and coercion and should have been precluded as being involuntarily made is also procedurally barred pursuant to C.P.L. §440.10(2)(c). A lengthy and thorough *Huntley* hearing was conducted in this matter on January 23, 2002. The admissibility of six statements made by the defendant was litigated at the hearing and four police officers were called to testify on this issue. A few of the statements were made prior to the *Miranda* warnings being administered, and the court found those statements admissible since they were made before the defendant was a target or before he was in custody. As to the *post-Miranda* statements, the court found that the defendant comprehended the warnings and that he knowingly, willingly and intelligently waived his constitutional rights. Upon viewing the sixty-five minute videotaped statement, the court found that the defendant did not appear to be intoxicated or suffering from deprivation or under coercion of any kind.

The defendant had ample opportunity during the course of this hearing to cross-examine witnesses about the allegations of coercion and physical deprivation he now raises, and with due diligence, he could have placed relevant facts on the record so that the claim could have been reviewed on direct appeal. However, he failed to do so.

C.P.L. §440.10(3)(a) states that a court may deny a motion to vacate judgment when:

Although facts in support of the ground or issue raised upon the motion could with due diligence by the defendant have readily been made to appear on the record in a manner providing adequate

basis for review of such ground or issue upon an appeal from the judgment, the defendant unjustifiably failed to adduce such matter prior to sentence and the ground or issue in question was not subsequently determined upon appeal.

In addition, the defendant has provided no explanation for why he waited eleven years to raise this issue, which is based on unsubstantiated and conclusory allegations. While there is no time limit on filing a C.P.L. §440 motion, courts have denied without a hearing motions brought after a prolonged or excessive delay. (*People v. Friedgood*, 58 N.Y.2d 467 [1983][Motion to vacate judgment of conviction denied without a hearing where defendant waited more than three years to file it and failed to show that he used due diligence in adducing the facts underlying the motion]). The credibility of defendant's claim comes into question when he has waited over a decade to raise it. (*See People v. Degondea*, 3 AD3d 148 [1st Dept 2003]).

Defendant's third claim, that he received ineffective assistance of counsel because his attorney did not preserve for appellate review the issues he raises in this motion, is without merit. When a claim of ineffective assistance is made under the federal constitution, the Court must apply the two-part test enunciated in *Strickland v Washington*, 466 US 668 (1984), which requires a showing that counsel's performance was deficient and that the deficiency in performance prejudiced defendant. (*See also Aparicio v. Artuz*, 269 F.3d 78, 95 [2d Cir. 2001]). The performance of counsel is deficient if it "[falls] below an objective standard of reasonableness" under "prevailing professional norms." (*Strickland supra* at 688). The second prong, also known as the prejudice prong, focuses on whether counsel's constitutionally ineffective performance affected the outcome of the proceedings. In asserting these claims, the defendant has the burden of overcoming the presumption that his counsel's representation was reasonable. (*Strickland supra* at 690). ("Counsel is strongly presumed to have rendered adequate

assistance and made all significant decisions in the exercise of reasonable professional judgment”).

In evaluating defendant’s claim of ineffective assistance of counsel under New York law, the Court must determine whether the evidence, the law and the circumstances of this particular case, viewed in totality and as of the time of the representation, reveal that the attorney provided “meaningful representation.” (*People v. Baldi*, 54 N.Y.2d 137 [1981]; *People v. Benevento*, 91 N.Y.2d 708 [1998]). “Judicial scrutiny of counsel’s performance must be highly deferential. A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. Due to the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance. There are countless ways to provide effective assistance in any given case.” (*Strickland, supra* at 689; *See also, People v. Baldi, supra* at 146-147; *People v. Jackson*, 52 N.Y.2d 1027 [1981]). The defendant must show that defense counsel’s alleged deficiency constituted egregious and prejudicial error such that it deprived him of meaningful representation. (*People v. Caban*, 5 NY3d 143 [2005]).

While ultimately unsuccessful, defense counsel mounted a zealous and cogent defense. The defendant is entitled to a fair but not necessarily perfect trial. Viewed objectively, counsel’s trial strategy in this case “might well have been pursued by a reasonably competent attorney.” (*People v. Satterfield*, 66 NY2d 796, 799 [1985]). Defendant claims that his attorney failed to object to the alleged legal insufficiency of the evidence or to the involuntary statements made by the defendant. However, defense counsel moved for a trial order of dismissal based on the grounds that the people had failed to prove a *prima facie* case, and counsel thoroughly litigated

the issue of the admissibility of defendant's statements at the *Huntley* hearing. The Court finds that under the challenging circumstances of this case, where there was overwhelming evidence against the defendant, his attorney provided meaningful representation. Therefore, defendant's motion to set aside his judgment of conviction on the grounds of ineffective assistance of counsel is denied.

Next, defendant argues that the assistant district attorney who took his videotaped statement made false promises which deceived him into making a false confession. He claims that while being interviewed, he was sitting in his underwear and convulsively shivering from the bitter cold. He alleges that the assistant district attorney promised that he could get warm clothes, could go home and not be charged with the crime if he would make a statement. Defendant has provided no substantiation for these claims, which are belied by the findings of the hearing court. At the conclusion of the *Huntley* hearing, the court found that upon viewing the video, the defendant did not appear to be suffering from deprivation or under coercion of any kind. Additionally, defendant's allegations are directly contradicted by an affirmation dated October 1, 2013 which has been provided by the Assistant District Attorney in question. ADA Kin Ng affirms that he made no promises to the defendant and the only discussion they had was recorded on videotape when he took the statement from the defendant. He categorically denies making the alleged promises at any time. The Court denies this aspect of defendant's motion since these allegations are made solely by the defendant and under these circumstances, there is no reasonable possibility that they are true. Under C.P.L. §440.30(4)(d), the court may deny a motion without a hearing when:

An allegation of fact essential to support the motion is contradicted by a court record or other official document or is made solely by the defendant and is unsupported by an other affidavit or evidence and under these and all the other circumstances attending the case, there is no reasonable possibility that such allegation is true.

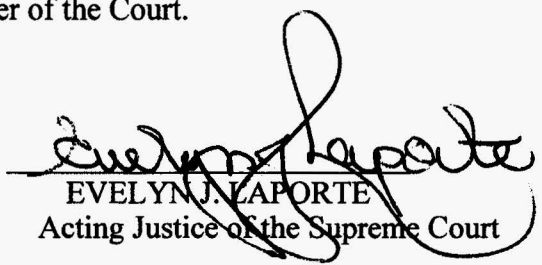
Finally, the defendant claims that during the jury's deliberations, the judge who presided at defendant's trial improperly instructed the jury not to speculate about other theories of how the death in this case occurred. In particular, they were not to consider whether a third party was involved. This claim formed the basis of defendant's direct appeal. It was reviewed on the merits and rejected by the Appellate Division, Second Department. (*People v. Manson, supra* at 500.)

Since the Court finds that there has been no retroactively effective change in the law controlling this issue, this claim, which was decided on direct appeal, is mandatorily barred from collateral review pursuant to C.P.L. §440.10 (2) (a), which states:

"...the court must deny a motion to vacate a judgment when... the ground or issue raised upon the motion was previously determined on the merits upon an appeal from the judgment, unless since the time of such appellate determination there has been a retroactively effective change in the law controlling such issue."

Therefore, defendant's motion is denied in its entirety.

This constitutes the decision and order of the Court.


EVELYN J. LAPORTE
Acting Justice of the Supreme Court

HON. EVELYN J. LAPORTE

ENTERED
DEC - 2 2014
NANCY T. SUNSHINE
COUNTY CLERK

Right to appeal:

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 C.P.L. §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. **THE APPLICATION MUST BE SENT TO THE APPELLATE DIVISION, SECOND DEPARTMENT, 45 MONROE PLACE, BROOKLYN, NY 11201.** In addition, you must serve a copy of your application on the Kings County District Attorney, Renaissance Plaza, 350 Jay Street, Brooklyn, NY 11201. Do **NOT** send notice of appeal to the Supreme Court Justice who decided this motion.

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 question 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.