

People v Coombs

2014 NY Slip Op 33043(U)

October 21, 2014

Supreme Court, Kings County

Docket Number: 12477/2008

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.: 12477/2008
	:	By: Hon. Evelyn Laporte
-against-	:	
	:	Date: October 21, 2014
DAVID COOMBS,	:	
Defendant.	:	
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The defendant has filed a motion *pro se* pursuant to C.P.L. §440.20 to set aside his sentence on the grounds that he didn't understand the charges against him, nor the consequences of his guilty plea, due to a traumatic brain injury. Additionally, the defendant moves pursuant to C.P.L. §440.10 to vacate his judgment of conviction on the ground that defense counsel provided ineffective assistance at the plea and sentencing proceedings.

Defendant claims that his counsel failed to seek a competency hearing, even though he was aware that defendant had suffered a traumatic brain injury in a motorcycle accident five years prior to entry of his guilty plea. He further argues that defense counsel did not adequately explain the plea agreement, that he had a conflict of interest, and that he was prejudiced against the defendant. Defendant has submitted medical records of a visit to Beth Israel Medical Center which occurred three days after he entered the plea in this case. The hospital visit was related to a disc compression in the defendant's lumbar spine and unrelated to a prior brain injury, although that injury was mentioned in the records as a prior condition.

The People argue that defendant's claim is unsubstantiated and that the minutes of the plea and sentencing proceedings reflect that the defendant was given substantial time to discuss the plea offer with his attorney and with family and friends who were present in the courtroom. They argue that defendant did not express any lack of cognisance nor did he express in any way that his plea was involuntary or that he was dissatisfied with the legal services provided to him by his attorney. In addition, the People have supplied an affirmation from defense counsel denying the defendant's assertions regarding counsel's behavior. The People conclude that defendant's claims are all without merit.

This case involves an incident which occurred on December 14, 2008. On that date, the defendant entered a bar located in Brooklyn. While in the bar, he grabbed the buttocks of several women and was therefore told to leave. He attempted to return to the bar, but was denied entry. A short time later, he returned with a double-barrel shotgun, which he fired through a window into the bar, injuring three people. He was later arrested at his aunt's home, where he was living at that time. When questioned by the police, he gave a statement revealing the location of the shotgun, which was subsequently recovered in his aunt's house, loaded with one live round and one spent round of ammunition. For these acts, the defendant was indicted for twenty counts including three counts of Attempted Assault in the First Degree, three counts of Assault in the Second Degree, Reckless Endangerment in the First and Second Degrees, and Criminal Possession of a Weapon in the Second, Third, and Fourth Degrees.

The defendant had previously been convicted of a violent felony offense, Attempted Robbery in the Second Degree, on July 19, 2007, which made him a violent predicate felony offender for this case. That plea was also entered subsequent to defendant's alleged traumatic

brain injury, yet the defendant does not challenge that conviction. He also did not controvert the prior conviction at his sentencing proceeding in this case, when he was adjudicated a second violent felony offender. ¹

During plea negotiations for the instant case, the judge accurately informed the defendant of the law in effect in 2008 when this crime was committed, that he could be facing between twenty-one and forty-five years imprisonment, if convicted after trial. (P.L. §70.04[3][b], as added by L. 1995, ch. 3, §5). The People offered a plea with a promised determinate sentence of twelve years, but the court offered a plea to Attempted Assault in the First Degree with a promised sentence of incarceration for seven years with five years post-release supervision. According to the minutes, the offer by the court to the minimum period of incarceration for a second violent felony offender was made based on the persuasiveness of defense counsel. ²

The minutes also reflect that the defendant was given an opportunity to confer extensively with counsel and with the friends and members of his family who were present in the courtroom that day. ³ He allocuted without hesitation to the elements of the crime, acknowledged the loss of his *Boykin* rights, and stated that he was entering the guilty plea freely and voluntarily, without threats or coercion. He stated that he was not under the influence of any drugs or alcohol, and that he was satisfied with his attorney, with whom he discussed the case at length. ⁴

¹ See sentence minutes, 3/31/2009, pp. 2-3

² See plea minutes, 2/17/2009, p. 2, line 19-21.

³ *Id.* at p. 4, line 13-16.

⁴ *Id.* at pp. 3-5

Additionally, the People provided an affidavit from defense counsel which denies that counsel threatened or coerced the defendant, further denies that defendant made counsel aware of any mental defect due to a prior accident, and states that the defendant appeared to understand the proceedings. Defendant's assertions are therefore unsubstantiated in any way.

C.P.L. §440.20 provides that, "at any time after the entry of a judgment, the court in which the judgment was entered may, upon motion of the defendant, set aside the sentence upon the ground that it was unauthorized, illegally imposed or otherwise invalid as a matter of law." In this case, the defendant has failed to provide the Court with legal grounds to set aside the sentence, since the sentence imposed was valid and authorized.

As to defendant's claims regarding ineffective assistance of counsel, The two-part test in *Strickland v Washington*, 466 US 668 (1984) 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 plea process." (*Hill v. Lockhart*, 474 US 52, 59 [1985]). 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.") 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]*).

Based on defendant’s allegations, 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]*). “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. 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]*).

Here, defense counsel advocated zealously for his client and obtained the minimum sentence available for a second violent felony offender. The minutes of the plea and sentence belie the defendant’s claims regarding the quality of representation provided to him by defense counsel.

Counsel negotiated a favorable disposition on defendant's behalf in a difficult case. The record does not reflect any coercion or involuntariness on the part of the defendant, nor does defendant provide any support for the allegation that his attorney had a conflict or was prejudiced against him. Therefore, the defendant received the meaningful, effective representation to which he was entitled. Defendant’s motion is therefore denied in its entirety.

This constitutes the decision and order of the Court.

ENTERED
DEC - 2 2014
NANCY T. SUNSHINE
COUNTY CLERK

Evelyn J. Laporte
EVELYN J. LAPORTE
Acting Justice of the Supreme Court

FOR EVELYN J. LAPORTE

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.