

People v Staple

2015 NY Slip Op 30684(U)

March 19, 2015

Supreme Court, Kings County

Docket Number: 7773/2010

Judge: Elizabeth A. Foley

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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 : CRIMINAL TERM PART 30

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 THE PEOPLE OF THE STATE OF NEW YORK

Present: Hon. Elizabeth Foley

-against-

DECISION & ORDER

KRISTOFF STAPLE,

Indictment No. 7773/2010

Defendant.

-----X

Defendant moves, *pro se*, to vacate his judgment of conviction pursuant to CPL §440.10, claiming that he was denied the effective assistance of counsel and that his sentence was illegal. For the following reasons, the motion is denied.

Defendant's conviction stems from an incident that took place in Brooklyn on the night of August 31, 2010. Defendant, armed with a gun and in participation with a co-defendant, forcibly stole property from three different complainants. For his acts, defendant was charged under Kings County Indictment No. 7773/2010 with four counts of robbery in the first degree (PL §160.15[2], [4]), two counts of robbery in the second degree (PL §160.10[1]), two counts of robbery in the third degree (PL §160.05), two counts of burglary in the first degree (PL §140.30[1], [4]), one count of burglary in the second degree (PL §140.24[2]), one count of burglary in the third degree (PL §140.20), and other related charges.

On May 16, 2011, represented by counsel, defendant pleaded guilty to one count of robbery in the first degree (PL §160.15[2]) in full satisfaction of the indictment. In exchange for his guilty plea, defendant was promised a sentence of eight years in prison to be followed by five

years of post-release supervision. The People, seeking a sentence of twelve years, objected to the Court's promised sentence. As part of the plea allocution defendant stated on the record that he was guilty of the crime charged and that he understood the rights he was giving up. He also stated that he understood that he would receive a sentence of eight years in jail plus five years post-release supervision. Finally, defendant attested that he was pleading guilty of his own free will and that no one had threatened or coerced him to accept the plea.

On May 17, 2011, defendant made a *pro se* motion to withdraw his plea pursuant to CPL §220.60, claiming that he was "not fully aware of the circumstances involved" when he accepted the plea and that he "never fully understood" the Court's instructions as to his legal rights. Defendant further claimed that he "was pressured and coerced into pleading guilty. His counsel, as well as the presiding justice frightened and bullied him into pleading guilty.

At sentencing on May 26, 2011, defendant withdrew his CPL §220.60 motion after a colloquy in court. The Court then imposed the promised sentence of eight years plus five years of post-release supervision.

On July 27, 2011, defendant filed a motion in the Appellate Division, Second Department for an extension of time to appeal from the judgment of conviction, for leave to prosecute the appeal as a poor person, and for assignment of counsel. The Appellate Division granted only that part of defendant's motion seeking additional time to take an appeal by decision and order dated November 29, 2011. Defendant has not yet perfected an appeal from the instant judgment of conviction.

Defendant now submits a simple form Notice of Motion and Affidavit, seeking to vacate his judgment of conviction on the grounds of "ineffective assistance of counsel an[d] duress" and

that his sentence was illegal. Defendant offers no allegations of fact or other documentation to support the claims made in the instant motion.

Defendant's claims of ineffective assistance of counsel and duress are wholly unsubstantiated and lack the requisite factual support to warrant consideration (CPL §440.30[4][b]). Defendant has failed to allege any specific deficiency by counsel or to describe how he was pressured into pleaded guilty. As a result, his claims are rejected because "the motion is based upon the existence or occurrence of facts and the moving papers do not contain sworn allegations substantiating or tending to substantiate all the essential facts" *Ibid.*

In any event, the record indicates that counsel provided meaningful representation (*People v Baldi*, 54 NY2d 137, 147 [1981]; *People v Benevento*, 91 NY2d 708 [1998]). Where "a defendant, on the advice of counsel, has entered a plea of guilty and reaped the benefits of a favorable plea bargain which substantially limits his exposure to imprisonment, he has received adequate representation" (*People v McClure*, 236 AD2d 633 [2nd Dept.], *lv denied*, 89 NY2d 1097 (1997); *see, People v Ford*, 86 NY2d 397, 404 [1995], *overruled on other grounds by People v. Peque*, 22 NY3d 168 (2013)). In this instance defendant faced potentially lengthy consecutive sentences for robbing three different victims, yet counsel managed to negotiate a very advantageous plea bargain over the People's objection. There is nothing else in the record to cast doubt on the apparent effectiveness of counsel (*Ford, supra* at 404).

Finally, there is no legal basis for vacatur on the ground that defendant's sentence was illegal, invalid or unauthorized because the sentence was properly imposed under the law (CPL §§440.20[1], 440.30[4][a]). Defendant was convicted of a class B felony. The sentence he received of eight years imprisonment plus a five-year term of post-release supervision is within

the statutorily prescribed range for such an offense (PL §70.00). Absent any legal basis for defendant's challenge to his sentence, this claim is rejected (CPL §440.30[4][a]).

Accordingly, the motion is denied in its entirety.

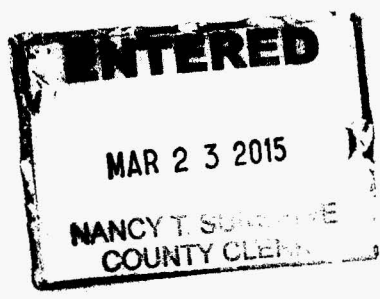
This decision constitutes the order of the Court.

ENTER:



ELIZABETH A. FOLEY, J.S.C.

Dated: March 19, 2015



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 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.

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 District Attorney.

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