

**People v Quiles**

2017 NY Slip Op 32684(U)

January 11, 2008

Supreme Court, Westchester County

Docket Number: 1584-06

Judge: Robert M. DiBella

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

**FILED**  
AND  
**ENTERED**  
ON 1 18 2008  
WESTCHESTER  
COUNTY CLERK

-----X  
THE PEOPLE OF THE STATE OF NEW YORK

- against -

VICTOR QUILES,

**FILED**  
JAN 18 2008  
THEODORE C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER  
Defendant

DECISION AND ORDER

Ind. No. 1584-06

-----X  
DIBELLA, J.

The defendant moves pursuant to Criminal Procedure Law § 440.10 for an Order vacating his judgment of conviction. The People oppose the motion. The motion is procedurally defective and substantively without merit.

On June 13, 2007, the defendant was convicted following a jury trial of Burglary in the Second Degree, Petit Larceny, and Criminal Possession of Stolen Property in the Fifth Degree. On August 31, 2007, the defendant was sentenced as a persistent violent offender to an indeterminate term of eighteen years to life imprisonment. The defendant filed a notice of appeal. The People represent that the appeal has not yet been perfected.

In support of his motion the defendant claims: (1) there was insufficient evidence to sustain his Burglary in the Second Degree conviction; (2) his conviction was procured by duress, misrepresentation, and fraud due to prosecutorial misconduct, the false testimony of witnesses, and an improper in-court identification; (3) the court erred in charging the jury; (4) the court improperly allowed the introduction of evidence seized as the product of an illegal arrest; (5) the prosecutor excluded potential jurors on the basis of

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race in violation of State and Federal Law; (6) ineffective assistance of counsel; and (7) he was under the influence of medication and therefore not competent to aid in his defense.

A motion to vacate a judgment of conviction must be denied when, "[t]he judgment is, at the time of the motion, appealable or pending on appeal, and sufficient facts appear on the record with respect to the ground or issue raised upon the motion to permit adequate review thereof upon such an appeal." CPL §440.10(2)(b). This court must also deny such a motion if a defendant had the ability to raise the claim set forth in his motion on direct appeal but failed to perfect such an appeal. See CPL §440.10(2)(c).

Defendant's challenges to the sufficiency of the evidence, the court's charge to the jury, the court's evidentiary rulings and denial of his motion to suppress physical evidence, claims of prosecutorial misconduct, his equal protection claim under Batson v. Kentucky, 476 U.S. 79 (1986), and his claim that he was not competent to stand trial are reviewable on direct appeal. Hence, the claims are not cognizable in a CPL 440.10 motion and must be summarily denied. See CPL §§ 440.10(2); 440.30 (2).

In addition, the defendant previously moved this court to set aside the verdict pursuant to CPL 330.30. In such motion the defendant raised many of the same claims set forth in the instant motion.<sup>1</sup> As these claims have already been considered and

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<sup>1</sup>In his CPL 330.30 motion the defendant claimed that the People improperly excluded potential jurors on the basis of race, the court erred in not striking the testimony of a witness based on the People's failure to disclose his prior conviction, the court improperly charged the jury on the elements of Burglary in the Second Degree, his  
(continued...)

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rejected by this court, the doctrines of res judicata and collateral estoppel preclude him from relitigating these claims in this court. See LaRocco v. Goord, 43 A.D.3d 500 (3<sup>rd</sup> Dept. 2007).

The defendant's ineffective assistance of counsel claim is substantively without merit. He fails to demonstrate that he was deprived of meaningful representation and that he suffered actual prejudice as a result of counsel's deficient representation, see Matter of Leo UU, 288 A.D.2d 711, 713 (3<sup>rd</sup> Dept. 2001), or "the absence of strategic or other legitimate expectations for counsel's alleged shortcomings." People v. Benevento 91 NY2d 708, 712 (1998). Notably, the defendant fails to articulate facts or present any evidence in support this claim. Hence, his conclusory assertions are insufficient to demonstrate that counsel's conduct was deficient or that he suffered any prejudice from the alleged deficient representation. See eg. Matter of Thompson v. Gibeault, 305 A.D.2d 873, 875 (3<sup>rd</sup> Dept. 2003).

There is also no merit to the defendant's claim that his due process rights were violated because the People's witnesses made false statements at trial. The resolution of issues of credibility is primarily a matter to be determined by the trier of fact, which saw and heard the witnesses, and its determination should be accorded great deference. Moreover,

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<sup>1</sup>(...continued)

conviction was procured by duress, misrepresentation, and fraud, the People introduced evidence that should have been suppressed on constitutional grounds, and ineffective assistance of counsel. This court issued a Decision and Order on August 29, 2007, denying the motion.

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a "presumption of regularity attaches to judicial proceedings and the burden is upon [the] defendant to overcome such presumption by substantial evidence." People v. Williams, 11 A.D.3d 810, 812 (3<sup>rd</sup> Dept 2004). In light of the fact that the defendant offers no evidence other than his unsubstantiated assertions that the witnesses did not testify truthfully, his claim provides no basis for relief.

Finally, the court rejects the defendant's claim that his judgment of conviction must be vacated because he was not competent to stand trial. Initially, neither the defendant nor his attorney contested his competency to proceed to trial. Moreover, there was nothing about the defendant's conduct during the pretrial hearings or trial that would cause this court to doubt his competency. In addition, the court's direct communications with and observations of the defendant indicated that he understood the trial proceedings and was able to aid his attorney in his defense. Under these circumstances, the defendant fails to demonstrate that he was not competent to stand trial and the court was not obligated to order a hearing *sua sponte* on the issue of the defendant's competence. See People v. Arnold, 113 A.D.2d 101 (4<sup>th</sup> Dept. 1985).

Based on the foregoing, the defendant's motion is denied.

In reaching this decision the court considered the following papers:

- (1) Defendant's Notice of Motion dated July 16, 2007 and Affidavit and Exhibits in Support; and
- (2) The People's Affirmation in Opposition dated December 21, 2007, with annexed Memorandum of Law and Exhibits "A" - "C".

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Dated: White Plains, New York  
January 11, 2008

  
HON. ROBERT DIBELLA, A.J.S.C.

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