People v Sanchez
2021 NY Slip Op 33669(U)
October 6, 2021
Supreme Court, Westchester County
Docket Number: Ind. No. 18-1213
Judge: Barry E. Warhit
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OCT - 6 2021

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

SUPREME COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER
---X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER
Indictment No.: 18-1213

LUIS SANCHEZ,

Defendant.
---X
WARHIT, J.

Defendant filed a counseled motion seeking to vacate his conviction pursuant to Criminal Procedure Law ("CPL") §220.60[3] for permission to withdraw his previously entered plea of guilty to criminal possession of a weapon in the second degree (PL 265.02[1]). The People oppose this application in its entirety. In contemplation of this motion, the Court read and considered the following papers:

Motion to Withdraw Plea of Guilty Affirmation and Annexed Minutes of the Plea Proceeding; and Affirmation in Opposition and *Memorandum of Law*

Relevant Procedural Background

Luis Sanchez ("Defendant") is charged, under the within indictment, with attempted robbery in the first degree (PL § 110/160.15[3]), criminal possession of a weapon in the third degree (PL § 265.02[1], obstructing governmental administration in the second degree (PL § 195.05) and harassment in the second degree (PL § 240.26[1]). The matter proceeded to jury trial. On or about October 8, 2019, a jury convicted defendant of the latter two charges but hung as to the two felony counts. Accordingly, Defendant's bail status was continued, and the matter was returned to the Trial Assignment Part ("TAP") for the purpose of scheduling a re-trial.

On November 22, 2019, Defendant's trial counsel was relieved and attorney Sam S. Coe was assigned in his stead. On January 1, 2020, the New York Bail Reform Act took effect. On January 6, 2020, attorney Coe filed a motion seeking Defendant's release on his own recognizance. On January 10, 2021, Defendant appeared in TAP personally and by counsel. The Court denied the defense motion, *inter alia*, on grounds that under the newly enacted statute, attempted robbery in the first degree is a bail qualifying offense (Transcript of Plea Proceeding, January 10, 2020 ("Plea Minutes"), pp. 2-3). On this same date, the Court conducted a sidebar attorney's conference (*Id.*, p. 3). The matter was adjourned for a second call (*Id.*)

During Defendant's second appearance on January 10, 2020, the Court advised him that the People had expressed willingness to offer him a sentence of 2 to 4 years in state prison in exchange for a plea (*Id.*, pp. 4-5). Upon defense counsel's request, an additional attorneys'

sidebar conference was held before the Court permitted an additional adjournment for a third call (*Id.,* p. 5, lines 9-12).

On the occasion of the case being called for a third time on January 10, 2020, the Court advised Defendant, "because your lawyer has asked, that you want to get out, you have some business to take care of, . . .", that in the event Defendant elected to accept the negotiated plea deal, under which he would be required to enter a plea of guilty to criminal possession of a weapon in the third degree in exchange for an indeterminate sentence of 2-4 years in state prison, the Court would be willing to release him on his own recognizance pending sentence (*Id.*, p. 5, lines 20-25 and p. 6, lines 1-2 and 22-24). The Court also informed Defendant that if he "wanted to surrender" prior to sentencing, he could do so to accrue additional local time prior to being sentenced to state prison (*Id.*, p. 6, lines 3-7 and 12-17). Additionally, the Court explained, presumably in response to inquiries made by counsel during the sidebar conferences, that an offer of 1-3 years or 1 ½ -3 years was not legally permissible (*Id.*, p. 7, lines 9-11). Upon Defendant's counsel having indicated Defendant was "interested in" and "willing to take the offer", the Court clarified that the two misdemeanor counts of which Defendant had already been convicted would "merge" with the negotiated sentence (*Id*, p. 7, lines 12-25).

Significantly, after the details of the negotiated plea had been set forth upon the record, the Court informed Defendant "I'm not asking you to take the offer, I'm not urging you to take the offer" (*Id.*, p. 8, lines 16-19). Defendant interjected to inform of his intention to proceed (*Id.*, p. 8, lines 20 and 23). In response, the Court encouraged him to speak to his lawyer and noted, the sentence would include orders of protection and fees (*Id.*, p. 8, lines 24-25 and p. 9, line 1).

The Court then placed Defendant under oath, confirmed his English language proficiency and that his interest in pleading guilty to the class D, non-violent felony, criminal possession of a weapon in the third degree (*Id.*, p. 9, lines 2-17). Under oath, Defendant acknowledged he had been given enough time to speak to his lawyer and professed to be happy with his work (*Id.*, p. 9, lines 18-22). Of particular relevance to this motion, the Court informed Defendant: "I don't want you to ask for your plea back later blaming [your attorney] for your situation. Can I rely upon your statement that you are fully satisfied with his work?" (*Id.*, p. 9, lines 18-25 and p. 10, line 1). Unambiguously, Defendant, who denied having used drugs, alcohol or medication, replied "Yes" (*Id.*, p. 10, lines 2-5).

During the plea colloquy, the Court informed Defendant as to the Constitutional and other rights implicated by his decision to avail himself of the negotiated plea deal (*see generally, Id.*, pp. 10-16). In particular, the Court advised Defendant, who acknowledged he understood, that by entering pleas of guilty he was giving up his right to a trial, whether by a judge or jury, and forfeiting his right to require the People to prove each and every element of each crime charged beyond a reasonable doubt (*Id.* at p. 10, lines 6-14). The Court also explained to Defendant that, by entering a plea of guilty, he was satisfying the People's burden of proof and absolving the prosecution of its obligation to call witnesses against him in addition to relinquishing his rights to cross-examine these witnesses, present evidence in his own defense, and remain silent (*Id.* at p. 10, lines 14-21). Defendant assured the Court he understood each of these concepts as well as the fact that his plea of guilty would result in a conviction just as if he had gone to trial and been convicted after verdict (*Id.*, p. 10, lines 22-25 and p. 11, line 1).

During the plea the allocution, Defendant specifically acknowledge he understood the Court's sentencing promise (*Id.*, p. 11, lines 2-16). Importantly, Defendant categorically denied anyone made any other promise to get him to accept the negotiated plea deal or was forcing to plead guilty prior to his having freely and voluntarily admitted he possessed a knife with intent to use it unlawfully (*Id.*, p. 11, lines 17-25, p. 12, lines 1-3 and p. 13, lines 5-9).

As part of its comprehensive plea *voir dire*, the Court addressed that, as a condition of the negotiated plea deal, Defendant was being asked to waive his appellate rights to the extent permitted by law (*Id*, p. 13, line 25, p. 14, lines 1-25 and p. 15, lines 1-19). The Court detailed the review function of the appellate court, noted defendant would be entitled to a lawyer free of charge to assist with the appeal process, and made sure Defendant had discussed his decision to waive his appellate rights with counsel (*Id.*; *see also*, p. 15, lines 19-25 and p. 16, lines 1-6). Additionally, the Court apprised Defendant, in the event he is not a citizen of the United States, his conviction under this indictment would result in his deportation (*Id.*, at p. 16, lines 10-25).

At the conclusion of the above detailed searching inquiry, Defendant reiterated he is in fact guilty and was "pleading guilty freely and voluntarily" (*Id.*, p. 17, lines 14-19). Specifically, Defendant admitted that, on October 20, 2018, he knowingly and unlawfully possessed a knife with the intent to use it unlawfully against another person and further acknowledged having previously been conviction of assault in the second degree (*Id.*, p, 17, lines 20-25 and p. 18, lines 1-22). Furthermore, Defendant recognized that, as this prior conviction had been lawfully and constitutionally obtained, he would be sentenced as a predicate felony offender (*Id.*, p. 18, lines 24- 25 and p. 19, lines 1-24). The Court assured all of Defendant's questions had been answered prior to accepting his plea of guilty as being given "freely, knowingly, and voluntarily" prior to releasing him on his own recognizance and setting a sentencing date of April 9, 2020 (*Id.*, p. 19, line 25 and p. 20, lines 1-11). Sentencing did not proceed as scheduled.

On or about September 14, 2020, Defendant was charged, under Westchester County indictment number 20-0265, with, *inter alia*, attempted murder in the first degree, robbery in the first degree and criminal possession of a weapon in the second degree. On or about October 7, 2020, this court assigned Angelo McDonald, Esq., who is assigned to represent Defendant in connection with his new indictment, to represent him on the herein matter.

On September 2, 2021, Defendant filed the within counseled motion seeking to withdraw his plea of guilty alleging it was procured by "systematic, persistent and coercive efforts by his [then] counsel" and efforts to "dissuade [Defendant] from electing re-trial, when he was asserting his innocence and wanted a retrial . . ." (Affirmation in Support, ¶ 7 and ¶ 11). Defendant also claims he was "easily persuaded and fooled" to enter a plea of guilty based upon "his age, mental, social and physical immaturity, his inexperience and unfamiliarity with the [l]egal [s]ystem" in addition to his "limited education and social upbringing" (*Id.*, ¶ 8). In support of this contention, Defendant cites to multiple recalls of his case on the day of his plea and that "the defendant was not afforded a hearing 'to make sure there [is] reasonable cause to believe that (he) committed a crime" (*Id.*, ¶¶ 12 and 14).

By Affirmation in Opposition and Memorandum of Law, filed on September 27, 2021, the People oppose Defendant's motion to withdraw his plea of guilty in its entirety.

Findings of Law

A guilty plea is intended to signify the end of a criminal case rather than serve as a "gateway" to further litigation (*see*, *People v. Hansen*, 95 NY2d 227, 230 [2000]; *and see*, *People v Taylor*, 65 NY2d 1, 5 [1985]). Although statute sets forth a procedure by which a defendant may seek to withdraw a previously entered plea of guilty, it is well settled that these applications should be sparingly granted in instances in which there is some evidence of innocence or that fraud or mistake played a role in inducing the plea (*People v. Smith*, 54 AD3d 879 [2d Dept. 2008]; *and see*, *People v Pillich*, 48 AD3d 1061 [2008]). As a general rule, where the record of the plea proceeding establishes a defendant unequivocally admitted his guilt knowingly, voluntarily and intelligently, a plea of guilty should not be disturbed (*see*, *Elmendorf*, 45 AD3d at 859; *People v. Fiumefreddo*, 82 NY2d 536 [1993]; *see also*, *People v. Fears*, 488 NYS 2d 26, 27 [2d Dept. 1985]). The decision whether to permit a defendant to withdraw a previously entered guilty plea is within the sound discretion of the sentencing court (CPL § 220.60[3]; *and see*, *People v. Alexander*, 97 NY2d 482 [2002]; *People v. Elmendorf*, 45 AD3d 858, 859 [2d Dept. 2007]). Upon consideration of the plea record herein, this Court declines to grant the requested relief.

In considering whether it is appropriate to return a plea of guilty, the Court is "entitled to rely on the record to ascertain whether any promises, representations, implications and the like were made to the defendant" and induced his plea (People v. Ramos, 65 NY2d 640, 642 [1984] (internal citations omitted). This Court conducted a searching plea allocution during which it ensured Defendant fully comprehended the consequences of his plea of guilty and was satisfied with the representation he received from counsel (*see generally*, Plea Minutes, pp. 9-17). Under oath, Defendant repeatedly and unequivocally acknowledged his guilt (*Id.*, p. 12, lines 1-3, p. 17, lines 14-25 and p. 18, lines 1 and 12-22). Where, as here, a plea record demonstrates a defendant unequivocally and voluntarily admitted his guilt during the plea allocution, a motion to withdraw a guilty plea is properly denied (see, *People v. Fears*, 488 NYS2d 26, 27 [2d Dept. 1985]).

So too, the record must demonstrate the defendant understood the sentence promise and he must be afforded the benefit of the bargain he enters (*People v. Pichardo*, 1 NY3d 203 [2003]). In this case, the plea minutes amply demonstrate Defendant was offered a negotiated plea deal under which, in exchange for his admission of guilt to the reduced count of criminal possession of a weapon in the third degree, he was promised an indeterminate sentence of 2 to 4 years in state prison (Plea Minutes, p. 4, lines 19-25, p. 5, lines 23-25, p. 6, lines 1-17, p. 7, lines 20-25, and p. 8, lines 1-2 and 9-10). This Court is prepared to keep its promise to impose this lawful sentence. Consequently, Defendant is not entitled to the return of his knowingly and voluntarily entered plea (*cf.*, *People v. Jackson*, 272 AD2d 342 [2d Dept. 2000]).

Of note, the within defendant's claim of innocence is unavailing. It is contended that, prior to the plea, Defendant was "asserting his innocence" and seeking a retrial (Affirmation in Support, ¶ 8). Beyond this, no details are offered in support of Defendant's alleged innocence. A plea of guilty is not properly nullified upon bare allegations of innocence (*People v. Dixon*, 29

NY2d 55 [1971]; *People v. Hansen*, 269 AD2d 467 [2d Dept. 2000]; *People v. Anderson*, 260 AD2d 643 [2d Dept. 1999] citing *People v. Evans*, 204 AD2d 346 [2d Dept. 1994]).

Similarly, unsubstantiated allegations of coercion present an insufficient basis upon which to permit withdrawal of a plea of guilty (*People v. Tavares*, 103 AD3d 820, 821 [2d Dept. 2013]). While Defendant herein contends his plea of guilty is the product of "systematic, persistent and coercive efforts by his [then] counsel to persuade him to plead guilty . . . dissuade him from electing a re-trial" and a "slick" tag-team" effort by his [then] [c]ounsel and the Court", this contention is factually bereft and debunked by the record (*see* generally, Plea Minutes; *cf.*, Affirmation in Support, ¶¶ 7 and 11). Although the plea minutes support Defendant's claim that his case was the subject of multiple recall on the date of his plea, in context, it is apparent these calls corresponded to issues related to scheduling and fine-tuning of the negotiated plea deal (Plea Minutes, pp. 3-9). Specifically, the record of the plea proceeding reveals the defense was seeking a sentence promise less than 2 to 4 years and the opportunity to be released from jail prior to the sentencing date (*Id.*, p. 4, lines 19-25, p. 5, lines 1-25, p. 6, lines 9-17 and p. 7, lines 9-11). Further, the claim that the Court was engaged in a "slick tag-team effort" is wholly defeated by the record. The Court specifically stated: "I'm not asking you to take the offer, I'm not urging you to take the offer. I will be asking you questions, either you are going forward, or you are not . . ." (*Id.*., p. 8, lines 14-19). Defendant interrupted to inform: "I'm going forward" (*Id.*, p. 8, lines 20-24).

A plea, such as this, which represents a choice freely made by a defendant among legitimate alternatives is voluntary (*People v. Grant*, 61 AD3d 177, 182 [2d Dept. 2009]). Under oath, Defendant herein gave his assurance that he was entering a plea of guilty "freely and voluntarily" based solely upon the court's promises and absent any force (Plea Minutes, p. 11, lines 17-25). The plea minutes offer ample proof that Defendant unambiguously indicated he was satisfied with then counsel's assistance (p. 9, lines 18-25 and p. 10, lines 1-2). Further, they demonstrate Defendant was fully cognizant of the Court's sentence promise as well as that, in the event he was not successful while released upon his own recognizance, he could be sentenced to 3 ½ to 7 years in state prison (*Id.*, pp. 5-8 and p. 11, lines 2-16 and p. 12, lines 4-8). Of note, under the law, upon conviction after trial to count one, attempted robbery in the first degree, as a second felony offender Defendant would have faced a minimum determinate prison sentence of 7 years followed by 5 years post-release supervision (Penal Law §§ 60.05(6), 60.13, 70.04 and 70.45(2).

This Court credits that Defendant may have felt some degree of stress or pressure when faced with the decision to enter a plea of guilty or decline the negotiated plea deal. Nevertheless, situational pressure that arises when a defendant must make this decision does not constitute undue pressure or coercion sufficient to warrant the return of an otherwise knowing and voluntary plea of guilty (*see generally*, *People v. Montgomery*, 27 NY2d 601 [1970]; *People v. Sparbanie*, 158 AD3d 942, 944 [3d Dept. 2019]; *and see*, *People v. Merck*, 242 AD2d 792 [3d Dept. 1997]). This is true regardless of whether counsel is alleged to have been the source of the purported pressure (*see*, *People v. Mann*, 32 AD3d 865 [2d Dept. 2006]; *see generally*, *People v. Manor*, 27 NY3d 1012, 1014 [2016]; *People v. Burdo*, 1 AD3d 793, 794 [3d Dept. 2003]). Significantly, Defendant's present claims are wholly unsupported by facts or details and,

moreover, during the plea allocution, he specifically denied his plea was the product of threats or coercion (*People v. Moore*, 294 AD2d 601 [2d Dept. 2002]); *and see*, *Tavares*, 103 AD3d at 821).

Finally, the assertion, that "limited education and deficient social upbringing" contributed to Defendant being "easily persuaded and fooled" into entering a plea of guilty, lacks factual support (*see*, Affirmation in Support, ¶ 8; *cf. Tavares*, 103 AD3d at 821). Moreover, the Court does not credit the defense's claim that youth, "inexperience and unfamiliarity with the legal system" rendered Defendant susceptible to being pushed to enter a plea of guilty (*see*, Affirmation in Support, 11). Defendant was 28 years old when he pleaded guilty and, as of then, had amassed a criminal history, dating back to 2009, including both felony and misdemeanor convictions.

Upon the foregoing, the within motion is properly, summarily denied (*see*, *People v. Hansen*, 269 AD2d [2d Dept. 2000] citing *People v Rosa*, 239 AD2d 364 [2d Dept. 1997]); *People v. Sain*, 261 AD2d 488, 489 [2d Dept. 1999] citing CPL § 220.60[3]). "[T]here exists no hard-and-fast rule which prescribes the nature and extent of the fact-finding procedures prerequisite to the disposition of motions to withdraw a plea of guilty previously entered" and "[only] in the rare instance will a defendant be entitled to an evidentiary hearing" (*People v.* Manor, 27 NY3d 1012 [2016] quoting *People v Tinsley*, 35 NY2d 926, 927 [1974]).

The foregoing constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York
October 6, 2021

Honorable Barry E. Warhit
Supreme Court Judge