

People v Yurkovsky

2021 NY Slip Op 33705(U)

October 14, 2021

Supreme Court, Westchester County

Docket Number: Indictment No. 19-0533

Judge: David S. Zuckerman

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SUPREME COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED

OCT 15 2021

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

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

-against-

DECISION & ORDER
Indictment No.: 19-0533

GARLAND YURKOVSKY,
Defendant.

-----X
ZUCKERMAN, J.

By Notice of Motion dated July 19, 2021 (but received on September 7, 2021), with accompanying Affirmation and Memorandum of Law, Defendant Garland Yurkovsky has filed a counseled motion, pursuant to CPL §220.60[3], seeking to vacate her previously entered plea of guilty to Attempted Grand Larceny in the Third Degree (Penal Law §110/155.25). The People have submitted an Affirmation in Opposition, dated September 28, 2021, opposing this application in its entirety.

Procedural History

In the instant indictment, Defendant is charged with Grand Larceny in the Third Degree (Penal Law §155.35[1]). On September 30, 2020, following pre-trial proceedings and a Determination of Readiness, Defendant pled guilty to Attempted Grand Larceny in the Third Degree (Penal Law §110/155.35[1]) with a promised sentence of five years probation and the issuance of a Restitution Judgement Order in the amount of \$45,793.43. In addition, a pending criminal matter before another court would be dismissed as covered by the plea.

As part of the plea proceedings, the court first had Defendant sworn. Defendant then confirmed a complete understanding of the negotiated plea (included sentencing promise) and desire to plead guilty to the class E, non-violent felony, Attempted Grand Larceny in the Third Degree. (Minutes, p. 9). Under oath, Defendant acknowledged being given sufficient time to speak to counsel and expressed complete satisfaction with counsel's services and representation (*Id.*, p. 7).

During the plea allocution, Defendant categorically denied that anyone had promised anything to compel acceptance of the

negotiated plea deal. At the conclusion of the above detailed allocation, Defendant again acknowledged complete guilt, "pleading guilty freely and voluntarily" (*Id.*, p. 15). Specifically, Defendant admitted that, on or about and between January 28, 2013 and December 23, 2016, knowingly and unlawfully attempted to steal property from another person valued in excess of \$3,000.00 (*Id.*, p. 15). Finally, Defendant indicated having understood everything that had occurred during the proceedings.

On or about March 11, 2021, prior to sentencing, Defendant indicated a refusal to sign the Order and Conditions of Probation and a desire to withdraw the previously entered guilty plea. On April 5, 2021, new counsel was appointed.

As set forth in the pre-sentence report, Defendant stated:

"that she is 'not guilty' and plead guilty to 'get the case over with.' She claimed that the victim (her adoptive father) was 'duping' his patients, and she took her 'share' as his office manager. The defendant dis state without providing further details that the victim's money 'went from a Paypal account to her bank.'"

On August 30, 2021, Defendant filed the instant motion to withdraw the guilty plea. During court proceedings on that date, Defendant stated that the instant motion was made because the previously entered guilty plea would be reflected on any credit history and would affect the spouse's "life and opportunity."

Contentions of the Parties

The instant counseled motion seeks withdrawal of the guilty plea "due to duress and evidence of innocence." Notice of Motion, p. 1. In counsel's Affirmation in Support, it is alleged that "the defendant did not understand that she was pleading guilty and did not appreciate that she would have a felony conviction on her record, as a result of the plea." Counsel adds that Defendant "maintains that she is innocent and that she did not 'steal' anything and that all alleged stolen proceeds were business expenses." In an unsworn "affirmation," Defendant writes that any stolen funds were used with the owner's permission to pay for office expenses. Notably missing from counsel's Affirmation in Support and Defendant's unsworn statement is any allegation of duress.

By Affirmation in Opposition and Memorandum of Law, filed on September 27, 2021, the People oppose Defendant's motion to withdraw her plea of guilty and urge its summary denial. They assert that the transcript from the plea proceedings, particularly Defendant's sworn responses to the court's questions, belie any present assertion of misunderstanding or duress.

Allocution Details

With respect to the unsupported assertion in Defendant's Notice of Motion that the plea was entered under duress, the plea minutes reflect:

THE COURT: I want to take a few minutes to talk to you about some of your rights now. I want to start by telling you that no one can force you to plead guilty to any criminal charges, ever. In fact, the decision whether to do so is yours and yours alone to make.

Do you understand?

THE DEFENDANT: Yes, Your Honor.

...

THE COURT: Has anyone coerced you, pressured you, threatened you, or forced you to plead guilty to this charge?

THE DEFENDANT: No.

...

THE COURT: Are you admitting your guilt and entering this plea freely and voluntarily and because it is what you want to do?

THE DEFENDANT: Yes, Your Honor.

With respect to the assertion, in counsel's Affirmation in Support, that Defendant did not realize that "she would have a felony conviction on her record, as a result of the plea," the plea minutes reflect:

THE COURT: Do you further understand that your plea of guilty will result in a conviction, just as if you had gone to

trial and been found guilty of attempted grand larceny in the third degree?

THE DEFENDANT: Yes, Your Honor.

With respect to Defendant's assertions of innocence, the plea minutes reflect:

THE COURT: Are you pleading guilty because you are in fact guilty?

THE DEFENDANT: Yes, Your Honor.

Discussion

A guilty plea is intended to signify the end of a criminal case rather than serve as a "gateway" to further litigation. *People v Taylor*, 65 NY2d 1, 5 (1985); *People v Hansen*, 95 NY2d 227, 230 (2000). Although CPL §220.60 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 and only in cases where 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); *People v Pillich*, 48 AD3d 1061 (4th Dept 2008) *lv denied* 11 NY3d 793 (2008). As a general rule, where the record of the plea proceeding establishes that a defendant unequivocally admitted guilt knowingly, voluntarily, and intelligently, a plea of guilty should not be disturbed. *People v Fiumefreddo*, 82 NY2d 536 (1993); *People v. Fears*, 110 AD2d 712 (2d Dept 1985). The decision whether to permit a defendant to withdraw a previously entered guilty plea lies within the sound discretion of the sentencing court. CPL §220.60(3); *People v Alexander*, 97 NY2d 482 (2002); *People v Elmendorf*, 45 AD3d 858, 859 (2d Dept 2007) *lv denied* 10 NY3d 810 (2008).

In considering whether it is appropriate to vacate 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 the 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 the plea of guilty. Defendant also assured the court of complete satisfaction with the representation received from counsel (see

generally, Plea Minutes, pp. 7-17). Under oath, Defendant repeatedly and unequivocally acknowledged guilt. (*Id.*, pp. 7-10, 15-16). Where, as here, a plea record demonstrates a defendant unequivocally and voluntarily admitted guilt during the plea allocution, a motion to withdraw a guilty plea is properly denied. *People v Fears, supra*.

So too, the record must demonstrate that the defendant understood the sentence promise and was afforded the benefit of the plea bargain. *People v Pichardo*, 1 NY3d 203 (2003). In this case, the plea minutes amply demonstrate that Defendant fully understood the negotiated plea deal under which, in exchange for an admission of guilt to the reduced count of Attempted Grand Larceny in the Third Degree, was promised, *inter alia*, a sentence of probation, plus a restitution judgment (Plea Minutes, pp. 10-11). This court is prepared to keep its promise and impose this lawful sentence. Consequently, Defendant is not entitled to the return of her knowingly and voluntarily entered plea. *People v Jackson*, 272 AD2d 342 (2d Dept 2000).

Notably, the Defendant's claim of innocence is unavailing. Beyond unsworn assertions that, as office manager, Defendant had the authority to use the stolen funds for the business, no other details or evidence are offered in support of the allegations of 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, an unsubstantiated claim of duress in a Notice of Motion, followed by the utter lack of affirmed, sworn or even unsworn allegations of such duress, presents an insufficient basis upon which to permit withdrawal of a plea of guilty. *People v Tavares*, 103 AD3d 820, 821 (2d Dept 2013). While counsel for Defendant contends that the plea of guilty was the product of duress, this contention is factually bereft and debunked by the record.

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 gave assurances that the plea of guilty was entered "freely and voluntarily" based solely upon the court's promises and absent any force (Plea Minutes, pp. 7, 9-10, 15-16). The

plea minutes also offer ample proof that Defendant was fully cognizant of the court's sentence promise and consented thereto. (*Id.*, pp. 10-11).

This court accepts the possibility 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 offer and proceed to trial. Nevertheless, situational pressure that arises when a defendant must make this decision does not constitute duress 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); *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. Moreover, during the plea allocution, Defendant specifically denied that the guilty plea was the product of threats or coercion. *People v Moore*, 294 AD2d 601 (2d Dept 2002); *People v Tavares*, *supra*, 821).

Hearing

"[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*, *supra*, quoting *People v Tinsley*, 35 NY2d 926, 927 (1974). Upon the foregoing, the within motion would normally be summarily denied. CPL § 220.60(3): *People v Hansen*, *supra*; *People v Rosa*, 239 AD2d 364 (2d Dept 1997); *People v Sain*, 261 AD2d 488, 489 (2d Dept 1999).

Yesterday, however, the Appellate Division issued a decision in *People v Amos*, 2021 NY Slip Op 05577 (Second Department, October 13, 2021.) In *Amos*, the defendant, after entering a plea of guilty, obtained new counsel and made a written pre-sentence motion to withdraw the plea (see CPL §220.60[3]). Defendant asserted a viable defense of which he allegedly was not aware at the time of the plea. As a result, Defendant concluded that the plea was not knowingly, voluntarily and intelligently entered. The trial court summarily denied the motion. On appeal, the Appellate Division noted the following:

Where, after a plea of guilty has been entered, and before sentence, defendant states to the court he [or she] is not guilty, or that he [or she] believes he [or she] is not guilty, the rule has developed that the court should not, except in extraordinary circumstances, then impose sentence, but either grant an application to allow the plea to be withdrawn; or conduct a hearing to determine whether the application has merit (*People v McKennon*, 27 NY2d 671, 672-673 [1970]).

The court then remitted the matter to the trial court to hold a hearing on the defendant's assertion of innocence. Similarly, here, Defendant moves, pre-sentence, to vacate a previously entered plea of guilty based upon an assertion of innocence. On constraint of *People v Amos* (and notwithstanding Defendant's failure to request same), the court is compelled to order a hearing on Defendant's motion.

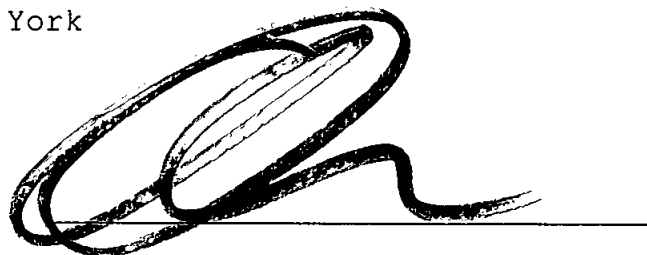
Based on the foregoing, it is hereby,

ORDERED, that the motion is granted, solely to the extent that a hearing is ordered regarding Defendant's claim of innocence; and it is further

ORDERED, Defendant and counsel are directed to appear for the hearing on October 20, 2021 at 9:30 a.m.

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

Dated: White Plains, New York
October 14, 2021

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a series of loops and a trailing flourish.

HON. DAVID S. ZUCKERMAN, A.J.S.C.

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