

**People v Martinez**

2021 NY Slip Op 34302(U)

September 24, 2021

Supreme Court, Westchester County

Docket Number: Ind. No. 15-00696-02

Judge: Robert A. Neary

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This opinion is uncorrected and not selected for official publication.

**FILED**

SEP 24 2021

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

<b>FILED</b>
<b>AND</b>
<b>ENTERED</b>
ON <u>9-24-2021</u>
<b>WESTCHESTER</b>
<b>COUNTY CLERK</b>

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

- against -

DECISION AND ORDER

MIGUEL MARTINEZ,

Ind. No. 15-00696-02

Defendant.

-----X

NEARY, J.

The defendant moves for an order, pursuant to CPL 440.10, vacating his judgment of conviction on the ground that the judgment was obtained in violation of his right to effective assistance of counsel. The People oppose the defendant's motion in all respects.

The Court has reviewed the following papers submitted by the parties:

- Defendant's Notice of Motion to Vacate Judgment,
- Affidavit in Support of Motion to Vacate Judgment,
- Memorandum of Law and exhibits.
- People's Affirmation in Opposition and Memorandum of Law.

CPL Article 440 permits the court in which a judgment of conviction has been entered, upon defendant's motion, to vacate the judgment on several enumerated grounds. Including among these grounds is, as defendant here alleges, that the judgment was "obtained in violation of a right under the constitution of this state or of the United States." [See CPL 440.10(1)(h)]. This procedure, which is designed to inform a court of facts not reflected in the record and not known at the time of judgment that would, as a matter of law, undermine the judgment, cannot be used as a vehicle for a second appeal or as a substitute for direct appeal. [See *People v. Crimmins*, 38 NY2d 407; *People v. Donovan*, 107 AD2d 433].

In the present case, the claims made are, in fact, in the trial record and cannot, therefore, be a basis for a motion to vacate under CPL 440.10. Moreover, the issue was raised, in large measure, on appeal. Indeed, on appeal, the defendant alleged that trial counsel was ineffective for reasons that included his alleged failure to confer regarding his psychological condition and medical treatment. Therefore, as the defendant's claim is record based and was raised on appeal, it cannot be a basis for a claim under CPL 440.10. Accordingly, the motion is denied on that basis.

The defendant's claim that counsel was ineffective because he did not successfully convince him to accept the plea offer is not supported by any facts and is conclusory in nature. The fact that he received a greater sentence after trial than was offered at the plea stage creates no inference that counsel was ineffective. The defendant can cite no specific example of faulty advice that was given. He only concludes that counsel should have been more convincing since it is now apparent that going to trial was "suicide." In short, the defendant has failed to show

that the decision to reject the plea offer and proceed to trial was not rational under the circumstances. [See *People v. Saunders*, 193 AD3d 76].

In any event, the record demonstrates that defense counsel provided him with meaningful representation. The rules governing ineffective assistance claims are well established. A defendant is constitutionally entitled not to a perfect lawyer, but to “meaningful representation.” [See *People v. Baldi*, 54 NY2d 137 (1981); see *People v. Benevento*, 91 NY2d 708 (1998)]. “Judicial scrutiny of counsel’s performance must be highly deferential.” [See *Strickland v. Washington*, 466 US 668, 689, 104 S Ct 2052, 80 L Ed2d 674 (1984)]. Even “significant mistakes by defense counsel” will not necessarily sustain an ineffective assistance claim. [See *People v. Turner*, 5 NY3d 476 (2005), citing *People v. Hobot*, 84 NY2d 1021 (1995) and *People v. Flores*, 84 NY2d 884 (1994)]. The Court’s review of the record demonstrates no error defense counsel committed here that crosses the threshold of ineffectiveness. The defendant’s moving papers fail to show that defense counsel’s performance fell below an objective standard of reasonableness and that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceedings would have been different. [See *Strickland v. Washington*, 466 US 668, 694 (1984)].

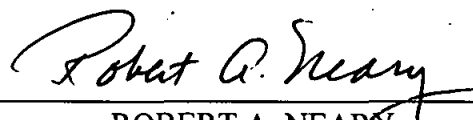
The denial of the defendant’s mid-trial application for new counsel does not provide a basis to vacate the judgment of conviction. Although defendants have no choice in selecting their assigned counsel, trial courts should substitute counsel only when a defendant can demonstrate “good cause.” In determining whether good cause exists, a trial court must consider the timing of the defendant’s request, its effect on the progress of the case and whether present

counsel will likely provide the defendant with meaningful assistance. Good cause determinations are necessarily case-specific and, therefore, fall within the discretion of the trial court. Good cause does not exist when defendants are guilty of delaying tactics or where, on the eve of trial, disagreements over trial strategy generate discord. While the State can guarantee a defendant meaningful representation, it cannot possibly ensure a harmonious relationship between defendants and their attorneys, particularly where defendants are contumacious or violent. [See *People v. Linares*, 2 NY3d 507; *Morris v. Slappy*, 461 US 1 (1983)]. In the present case, the defendant did not articulate any good cause basis for the Court to substitute counsel or conduct any further inquiry prior to denying the motion.

Therefore, as the defendant has failed to establish a basis to vacate the judgment of conviction pursuant to CPL 440.10, the motion is denied in its entirety.

This constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York  
September 24, 2021

  
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ROBERT A. NEARY  
SUPREME COURT JUSTICE

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*People v. Miguel Martinez*  
Indictment No. 15-00696-02

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