

People v Naughton

2024 NY Slip Op 33402(U)

July 9, 2024

Supreme Court, Westchester County

Docket Number: Indictment No. 70095-22

Judge: Anne E. Minihan

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

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

- against -

CARLTON NAUGHTON,

Defendant.

-----X
MINIHAN, J.

The following papers, numbered 1 to 14, were read on Defendant's Notice of Motion, dated January 26, 2024, seeking vacatur of his conviction pursuant to CPL § 440.10.

PAPERS

Notice of Motion/Affidavit/Exh. A
Defendant's February 22, 2024 Letter
Affirmation in Opposition/Memorandum of Law/Exhs. 1-4
Defendant's February 27, 2024 Letter
Defendant's February 27, 2024 Letter
February 28, 2023 Plea Minutes
Defendant's March 27, 2024 Letter

NUMBERED

1-3
4
5-10
11
12
13
14

FILED
JUL 11 2024
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant Carlton Naughton moves for an Order, pursuant to CPL § 440.10, vacating the November 18, 2022 verdict in which he was convicted of one count of criminal possession of a weapon in the third degree, or in the alternative, holding a hearing to address his claims.

Defendant was indicted on one count of manslaughter in the first degree (Penal Law § 125.20) and one count of criminal possession of a weapon in the third degree (Penal Law § 265.02[1] [knife and previous conviction]), arising out of an incident on August 27, 2021. Following a trial, the jury returned a verdict on the weapons count but was unable to reach a verdict on the manslaughter charge. The Court declared a mistrial on the manslaughter count. On November 18, 2022, the Court sentenced Defendant to 2½ to 7 years for the criminal possession of a weapon conviction (Exh. 4 at 1-2).

Prior to Defendant's scheduled retrial for the manslaughter count, on or about February 17, 2023, Defendant filed his first motion to vacate the weapons possession conviction pursuant to CPL § 440.10(1)(h), on the ground that it was obtained in violation of his right to the effective assistance of counsel (Exh. 4 at 1-2). Defendant argued that his trial counsel was ineffective when she "failed to request that the jury be charged with the 'Intent to Use Unlawfully and Justification' instruction for Count 2" (Exh. 4 at 6-7). Defendant asserted that counsel was ineffective when she failed to object to the Court's instruction to "the jury on three occasions that the People were not required to prove the 'defendant was not justified' for Criminal Possession

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of a Weapon in the Third Degree” (Exh. 4 at ¶23). Defendant noted that “[w]hile technically correct that the People are not required to prove that the ‘defendant was not justified’, the wording of this charge implies that justification has no role in the analysis of intent under Criminal Possession of a Weapon in the Third Degree” (Exh. 4 at ¶24). Defendant further argued that “[t]he CJI Instruction ‘Intent to Use Unlawfully and Justification’ clearly shows that, where applicable, justification is a relevant factor to be considered by the jury when assessing intent,” and “[d]efense counsel should have corrected this potential confusion to ensure that the jury was properly instructed on the applicability of justification, especially where the entire defense theory revolved around the concept” (Exh. 4 at ¶¶24-25). Had the jury been properly instructed, according to Defendant, they would have come to a different conclusion than guilt on the weapons possession count (Exh. 4 at ¶¶26-27).

Subsequently, Defendant entered a plea of guilty to manslaughter in the first degree and on March 24, 2023, he received a sentence of 6 years’ incarceration with 5 years’ post release supervision (December 11, 2023 Decision & Order at 2). At the time of the plea, Defendant withdrew the pending CPL § 440.10 motion (December 11, 2023 Decision & Order at 2; February 28, 2023 Transcript at 5, 12), and “admitted that he stabbed the victim causing his death. The only weapons involved in this incident were knives” (December 11, 2023 Decision & Order at 2). Defendant filed a Notice of Appeal on or about April 6, 2023 but never perfected it.

On or about September 20, 2023, Defendant moved “for an order ‘challenging the constitutionality of (Penal Law §265.02[10] unloaded firearm in the Third Degree) outside of home and business upon the accusatory instrument therefrom (U.S. Cons. Amend. 2), and at variance with the evidence presented at trial renders the indictment invalid pursuant to (C.P.L. §440.46)’.” Defendant cited CPL § 440.46 and *New York Rifle & Pistol Assoc., Inc. v Bruen*, 142 S Ct 2111, in support of his motion (December 11, 2023 Decision & Order at 1).

In opposition, the People argued, *inter alia*, that Defendant stood convicted of Penal Law § 265.02(1), not Penal Law § 265.02(10), and that his conviction “is not premised upon his possession of a firearm; rather, upon his possession of *the knife* he used to stab and kill Chinyelu Brown on August 27, 2021, and his prior conviction of ‘any crime’; here, criminal possession of a weapon in the fourth degree under Penal Law § 265.01(2) in Bronx County on November 3, 1996” (October 30, 2023 Affirmation in Opposition at 4). Thus, according to the People, *Bruen* “is wholly inapplicable insofar as defendant was neither charged with, nor convicted of, possession of a pistol or other firearm” (October 30, 2023 Affirmation in Opposition at 4-5).

The Court (Neary, J.) found, *inter alia*, there was “no basis to grant the defendant’s motion as he has failed to demonstrate his entitlement to the relief sought. The *Bruen* case involves firearms licensing which has no application to this matter. CPL 440.46 addresses re-sentencing in certain controlled substances cases” (December 11, 2023 Decision & Order at 2).

Defendant now files his third motion to vacate his conviction, asserting three grounds: “(1) trial counsel ineffectiveness arose by failure to conduct pre-trial investigation relative to Defendant’s lawful possession of a weapon, (2) failure to register an objection to this Honorable Court’s failure to give a jury instruction as it relate to possession of the weapon, and (3) this Honorable Court improperly sentenced Defendant under (Penal Law § 265.02[10] rather §

265.02[1]) unaccompanied by Respondent's filing a predicate statement demonstrating the tolling period that is unauthorized as a matter of law on a undeveloped record" (Affidavit at ¶2).

Defendant argues that counsel failed to conduct a pre-trial investigation regarding his lawful possession of a pocketknife while employed by the City of Mount Vernon Water Department and that he was "justifiably defending himself being in possession of a weapon for his employment" (Affidavit at ¶¶21-22). He asserts that there was "a reasonable view of the evidence supporting this defense," but that the record reveals that defense counsel failed to request that the court charge the jury with lawful possession. Defendant argues that he testified "that he only took his knife in confrontation for self-defense that after seeing the aggressor with a knife in his hand" (Affidavit at ¶22), and because the jury failed to reach a verdict on the manslaughter count, "[g]iven the clear video depicting the confrontation between Defendant and his aggressor, the only reasonable basis for this inability to render a verdict is that at least one jury member accepted the justification defense" (Affidavit at ¶25). Defendant also argues that his sentence was unlawfully imposed because it was amended without adequate notice (Affidavit at ¶27).

In opposition, the People argue that "as part of the plea bargaining process on a plea to the top count of the indictment, manslaughter in the first degree, and in exchange for an eminently favorable plea, defendant agreed to withdraw a CPL 440.10 motion directed at the lesser weapon count, alleging precisely the same claim and arguments set forth here," thereby precluding the re-assertion of the same claims in this motion (Memorandum of Law at 1). According to the People, in exchange for Defendant's plea to the top count and for withdrawing his CPL § 440.10 motion, he received 6 years' imprisonment to run concurrent to his prior sentence of 2½ to 7 years for the weapons count. As such, Defendant did not face any additional prison time by pleading guilty (Memorandum of Law at 1-2). Defendant also waived his right to appeal (Memorandum of Law at 2). The People argue further that viewing the matter as a whole and examining all the actions counsel took on Defendant's behalf, Defendant has failed to meet his burden of demonstrating that trial counsel provided ineffective assistance of counsel. In addition, there is no basis in law to support the charge of justification as it pertains to a weapons charge and thus, there is no merit to a claim that counsel failed to investigate or proffer as a defense that Defendant possessed the knife lawfully or used it in self-defense or request a jury charge on justification and/or temporary lawful possession. Finally, the People assert that Defendant's remaining claims must be dismissed because they are either record-based or bare allegations that fail to set forth a basis for relief.

Legal Analysis

The fundamental purpose of CPL § 440.10 is to provide an outlet to raise facts not reflected in the record and not known at the time of judgment, that could, as a matter of law, undermine the judgment on one of the enumerated grounds set forth in the statute (*Matter of Pirro v Cirigliano*, 226 AD2d 465 [2d Dept 1996]). A judgment of conviction is presumed valid and the party challenging its validity has the burden of coming forward with a *prima facie* showing sufficient to overcome that presumption in order to avoid summary denial of the motion as facially insufficient (CPL § 440.30[4]; *People v Clemmons*, 177 AD3d 899, 900 [2d Dept

2019] [“In moving to vacate a judgment of conviction, a defendant must come forward with allegations that raise a triable issue of fact sufficient to challenge the presumed validity of the conviction”).

A CPL § 440.10 motion is the appropriate forum for reviewing a claim which relates to matters not on the record (*see People v Pastor*, 28 NY3d 1089, 1091 [2016]). In determining a CPL § 440.10 motion to vacate, the court must deny a claim which is record based, in that sufficient facts appear on the record for that claim to have been adequately reviewed on appeal (*see* CPL § 440.10[2][c]). In considering the merits of such a motion, the court may deny it without conducting a hearing if, *inter alia*, “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” or “an allegation of fact essential to support the motion (i) is contradicted by a court record or other official document, or is made solely by the defendant and is unsupported by any other affidavit or evidence, and (ii), under these and all the other circumstances attending the case, there is no reasonable probability that such allegation is true” (CPL §§ 440.30[4][b]; [d][i]; [d][ii]).

As a threshold matter, Defendant expressly withdrew his second CPL § 440.10 motion, before a decision was rendered, which asserted these same ineffective assistance of counsel claims asserted in this third motion currently before the Court, in exchange for his promised sentence of six years’ incarceration when he pled to first-degree manslaughter. Consequently, Defendant waived the instant claims (February 28, 2023 Transcript at 5-6, 12) (*see generally People v Hollis*, 309 AD2d 764, 765 [2d Dept 2003] [defendant’s withdrawal of motion for vacation of his sentence constituted waiver of his claim that court should have conducted a resentencing proceeding]; *People v Baez*, 290 AD2d 372 [1st Dept 2002] [defendant’s claim asserted in motion to dismiss was affirmatively waived when defendant, through counsel, expressly withdrew motion, leaving nothing for court to decide]). However, even reaching the merits of Defendant’s arguments, the motion is denied for the reasons stated herein.

1. *Ineffective Assistance of Counsel Claim*

Defendant claims that the judgment of conviction should be vacated, pursuant to CPL § 440.10(1)(h), on the ground that he was denied the right to effective assistance of counsel under the United States and New York State Constitutions (US Const, Amend VI; NY Const, Art I, § 6). To prevail on a claim of ineffective assistance of counsel under the Sixth Amendment, a defendant must show that: (1) counsel’s conduct fell below an objective standard of reasonableness; and (2) the defendant suffered prejudice because of the attorney’s deficient performance (*Strickland v Washington*, 466 US 668 [1984]). Prejudice exists when “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different” (*Strickland v Washington*, 466 US at 668-669). The New York State standard requires a showing that defense counsel did not provide meaningful representation and focuses on the “fairness of the process as a whole rather than its particular impact on the outcome of the case” (*People v Benevento*, 91 NY2d 708, 714 [1998]). In terms of a guilty plea, a defendant has received meaningful representation when the defendant “receives an

advantageous plea and nothing in the record casts doubt on the apparent effectiveness of counsel” (*People v Ford*, 86 NY2d 397, 404 [1995]).

An attorney is “strongly presumed” to have rendered effective assistance to his client (*Strickland v Washington*, 466 US at 690), and thus, “[t]o prevail on a claim of ineffective assistance of counsel, the defendant must demonstrate his attorney’s failure to provide meaningful representation, and the absence of strategic or other legitimate explanations for his counsel’s allegedly deficient conduct” (*People v Holmes*, 47 AD3d 946, 947 [2d Dept 2008]; see *People v Caban*, 5 NY3d 143, 152 [2005]). In reviewing an ineffective assistance of counsel claim, “courts should not confuse true ineffectiveness with losing trial tactics or unsuccessful attempts to advance the best possible defense” (*People v Henry*, 95 NY2d 563, 565 [2000]). When a reviewing court is adjudging counsel’s representation, it must consider the record as a whole and view defense counsel’s performance in totality (*People v Holmes*, 47 AD3d at 947; see *People v Lopez-Mendoza*, 33 NY3d 565 [2019]). Applying these standards here, Defendant has failed to meet his burden of rebutting the presumption of effective representation and of demonstrating that he was denied meaningful representation.

During the proceedings, defense counsel filed an omnibus motion seeking a variety of relief. By Decision and Order dated April 27, 2022, the Court ordered pre-trial *Huntley*, *Dunaway*, *Mapp*, and *Sandoval/Ventimiglia* hearings. On July 29, 2022, the Court (Neary, J.) held a combined hearing to address the *Huntley*, *Dunaway*, and *Mapp* issues. After the hearing, on August 1, 2022, the Court (Neary, J.) rendered a decision, *inter alia*, declining to suppress Defendant’s statement made at the hospital. At his first trial, defense counsel effectively litigated the matter, cross examined the People’s witnesses, attacked the victim’s character to establish that Defendant acted in self-defense, and represented Defendant’s interests in such a manner that the jury was unable to reach a verdict on the top count. Further, at the second trial, Defendant received the benefit of a plea offer for which the promised and imposed 6 year term of incarceration was less than the upper amount of the indeterminate term of incarceration for the weapons’ count, and far less than he could have received after a conviction at trial for a class B violent felony – to wit, a determinate sentence of 5 to 25 years (Penal Law §§ 70.02[1][a], [2][a], [3][a]) (Memorandum of Law in Opposition at 7-8).

Nor can the Court deem trial counsel ineffective for failure to request a justification charge because there is no basis in law for such charge. Thus, defense counsel’s failure to request that charge cannot form the basis of an ineffective assistance of counsel claim. “Justification is not a defense to criminal possession of a weapon (see *People v Pons*, 68 N.Y.2d 264, 508 N.Y.S.2d 403, 501 N.E.2d 11; *People v Bailey*, 111 A.D.3d 1310, 974 N.Y.S.2d 227)” (*People v Sackey-El*, 149 AD3d 1104, 1105-1106 [2d Dept 2017]; see also *People v Fletcher*, 166 AD3d 796 [2d Dept 2018]). And it is inapplicable “to the crime of possession of a weapon, in any degree” (*People v Parks*, 200 AD3d 1598 [4th Dept 2021], quoting *People v Alexander*, 160 AD3d 1370, 1371 [4th Dept], *lv denied* 32 NY3d 1001 [2018]).

However, “[i]n some circumstances, a person may possess an unlicensed or proscribed weapon and still not be guilty of a crime because of the innocent nature of the possession” (*People v Sackey-El*, 149 AD3d at 1106, citing *People v Almodovar*, 62 NY2d 126, 130 [1984]). “To warrant a jury instruction on the defense of temporary and lawful possession, ‘there must be

proof in the record showing a legal excuse for [the defendant's possession of] the weapon ... as well as facts tending to establish that, once possession has been obtained, the weapon had not been used in a dangerous manner” (*People v Sackey-El*, 149 AD3d at 1106, quoting *People v Banks*, 76 NY2d 799, 801 [1990]; see *People v Reel*, 150 AD3d 1028 [2d Dept 2017]). “A person may be found to have had temporary and lawful possession of a weapon if he or she took the weapon from an assailant in the course of a fight” (*People v Sackey-El*, 149 AD3d at 1106).

But here, Defendant does not claim he temporarily possessed an illegal weapon. He claims he lawfully possessed a knife and habitually carried it with him as part of his job (Affidavit in Support at ¶14; Memorandum of Law at 7) – a very different situation from the concept of innocent possession under New York law. Further, during his manslaughter plea, Defendant admitted to stabbing the victim with the knife in that he pled “guilty freely and voluntarily because [he is] in fact guilty of [manslaughter in the first degree]” (February 28, 2023 Transcript at 8-9, 13) (see *People v Fletcher*, 166 AD3d at 798 [defendant is not entitled to innocent possession charge where evidence “is utterly at odds with any claim of innocent possession”]; see generally *People v Shamsiddeen*, 98 AD3d 694, 694-695 [2d Dept 2012] [where defendant was acquitted of murder having received the benefit of a justification charge to the jury, but convicted of criminal possession of a weapon in the second degree, defendant not deprived of effective assistance of counsel when defense counsel failed to request the court charge jury with temporary and lawful possession of firearm as defense to weapons count]¹). The fact that Defendant may have lawfully been in possession of the knife is of no merit when he used it in a dangerous manner (see *People v Parks*, 200 AD3d at 1598 [citations and quotation marks omitted] [even assuming, arguendo, that defendant obtained possession of the gun in an excusable manner, we conclude that there were no facts tending to establish that thereafter the gun had not been used in a dangerous manner]). Thus, there was no basis to request the charge and the failure to do so does not establish an ineffective assistance of counsel claim (*id.*).

Defendant claims that counsel was ineffective for failing to conduct a pre-trial investigation regarding his lawful possession of the knife. “It is elementary that the right to effective representation includes the right to assistance by an attorney who has taken the time to review and prepare both the law and the facts relevant to the defense” (*People v Cyrus*, 48 AD3d 150, 154 [1st Dept 2007], quoting *People v Droz*, 39 NY2d 457, 462 [1976]). Appellate courts have found that the failure to investigate or take further action regarding information disclosed may, “if sufficiently prejudicial to the defendant’s defense or right to a fair trial, constitute the ineffective assistance of counsel” (*People v Cyrus*, 48 AD3d at 157; see *People v Fogle*, 307 AD2d 299, 301 [2d Dept 2003]). But here, because there was no basis to request such a charge in this case, the failure to investigate Defendant’s purported lawful possession of the knife cannot constitute the ineffective assistance of counsel.

¹ Respondent’s Brief in *People v Shamsiddeen*, 98 AD3d 694, available at 2012 WL 13118205, *48-49.

2. Defendant's Sentence

Defendant argues that his sentence was amended without adequate notice. He asks the court to “take judicial notice of defense counsel Kenneth Calvey’s ex-parte communication that do not offer a different version of the facts involved herein and provide the factual predicate for relief” (Affidavit at ¶27). Defendant claims that Mr. Calvey “enlisted an employee by the Department of Correction & Community Supervision, Ms. Holford, who spoke to defense counsel on 2/16 and executed a judicial sentence not imposed by this Court” (Affidavit at ¶27). Defendant states (Affidavit at ¶27):

“It is reasonably submitted that Defendant’s conviction for Penal Law §265.02[10] rather than §265.02[1] unlawfully change without adequate notice unaccompanied by Respondent filing a predicate statement challenging ‘a crime’ (see Penal Law 265.02[1]) mandates a tolling period that is readily not discernable in the trial record and remain undeveloped for appellate review.”

Defendant continues to argue that the sentence imposed should be vacated or remanded based on ineffective assistance of counsel during the sentencing phase of the proceeding (Affidavit at ¶28).

In opposition, the People explain that Defendant argues that his sentence was unlawfully imposed in that he was convicted of Penal Law § 265.02(10) but the Court and defense counsel “conspired to change his conviction to Penal Law § 265.02(1)” and “that the prior conviction was too old to serve as a predicate for the enhanced charge of Penal Law § 265.02(1)” (Memorandum of Law at 15). People argue that the claims are factually inaccurate and improperly pleaded.

The Court is unsure what Defendant is arguing, in that he fails to coherently allege a ground constituting a legal basis for the motion (*see* CPL § 440.30[3]). But, to the extent Defendant is moving to set aside his sentence, there is no proof to support a finding that his sentence was “unauthorized, illegally imposed or otherwise invalid as a matter of law” (*see* CPL § 440.20[1]; *see People v Gifford*, 2 AD2d 642 [3d Dept 1956] [defendant’s application designated as a writ of coram nobis would be treated as application to vacate sentence and resentence where such relief was sought]).

According to the original Uniform Sentence and Commitment Order, dated November 18, 2022 (Exh. 1), the sentence imposed was for a conviction of Penal Law § 265.02(10) (possession of an unloaded firearm while committing certain violent felonies) – which was not the crime he was convicted of at trial.

On February 3, 2023, DOCCS wrote to the Court, on notice to the People, defense counsel, and Defendant (Exh. 2), indicating that Defendant’s sentence was incorrect for the crime of Criminal Possession of a Weapon in the Third Degree (sub. 10). On February 17, 2023, Defendant pled guilty to manslaughter in the first degree and was subsequently sentenced to 6 years’ imprisonment and 5 years’ post-release supervision (*see supra* at 2; (December 11, 2023 Decision & Order at 2).

Then, on February 24, 2023, the Court issued an amended Uniform Sentence and Commitment Order, reflecting the same terms of imprisonment but for Defendant's conviction of Penal Law § 265.02(1) (commission of fourth degree CPW and having been previously convicted of any crime) – the crime that the jury found him guilty of. There was nothing illegal or improper. Despite Defendant's assertion to the contrary, it was not a modification of his sentence; rather, it was simply a correction of a typographical error related to the subsection of the same statute and entirely proper, as it reflected the proof and conviction after trial (*see People v Wheeler*, 49 AD3d 1230, 1231 [4th Dept 2008], citing *People v Rodriguez*, 216 AD2d 40, 41 [1st Dept 1995] ["Although Defendant is correct that the sentence imposed in each appeal does not correspond to County Court's sentencing commitment, we conclude that the error was ministerial."]; *see generally Muniz v Selsky*, 301 AD2d 769, 770 [3d Dept 2003] [typographical error on the misbehavior report showing an incorrect date and time for collection of inmate's urine sample was sufficiently explained by reporting officer in his hearing testimony; substantial evidence of petitioner's guilt of violation of prison disciplinary rule prohibiting possession of controlled substance established]; *cf. People v Jenkins*, 300 AD2d 751, 753-754 [3d Dept 2002], citing *People v Cano*, 287 AD2d 730 [2d Dept 2001] [remittal to county court for resentencing to address discrepancy in sentencing minutes and the Sentence and Commitment Statement of Conviction form filed in county court]).

Furthermore, Defendant's remaining arguments related to his sentence appear to be nothing more than bare allegations unsupported by sworn facts which shall be summarily denied (CPL § 440.30[4]), or are record based and should be raised on a direct appeal (*see* CPL § 440.10[2][b]).

Accordingly, it is hereby

ORDERED that Defendant's motion is denied; and it is further

ORDERED that any issue not directly addressed herein is denied.

This foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York

July 9, 2024



Honorable Anne E. Minihan
Justice of the Supreme Court

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