

People v Melvin

2014 NY Slip Op 33039(U)

November 24, 2014

Supreme Court, Kings County

Docket Number: 5540/11

Judge: Deborah A. Dowling

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This opinion is uncorrected and not selected for official publication.

At Part 1 of the Supreme Court of the State of New York, held in and for the County of Kings, located at 320 Jay Street, Brooklyn, New York, on the 24th day of November, 2014.

P R E S E N T:

HON. DEBORAH A. DOWLING,

Justice.

-----X

THE PEOPLE OF THE STATE OF NEW YORK

AGAINST

ORDER

INDICTMENT NO. 5540/11

ANTHONY MELVIN,

-----X

The defendant moves for an order vacating his conviction pursuant to Criminal Procedure Law §440.10(1)(h). The defendant argues he did not receive effective legal representation as was his right under the United States constitution and the New York State Constitution. Specifically, the defendant asserts trial counsel failed to advise him of the immigration consequences he would face upon making the decision to plead guilty to the charges herein. The defendant relies upon precedent in Supreme Court Case, *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010). The People opposed the defendant's motion. After due consideration of the papers submitted herein and all arguments asserted by the parties, it is

ORDERED, the defendant's motion is denied in its entirety.

Although the defendant contends he was not advised of the immigration consequences which would result from him pleading guilty in this case, the record does not support the defendant's contentions. In fact the record reveals the court unequivocally advised the

defendant of the potential immigration consequences to pleading guilty, including the fact the defendant would be subject to deportation as a result of the guilty plea. The record also reflects, the defendant acknowledged that he discussed potential immigration consequences with his trial counsel. The following colloquy ensued,

THE COURT: Mr. Melville¹, have you previously been convicted of a felony?

THE DEFENDANT: Yes, your honor

THE COURT:..Mr. Melville, let me ask you this, are you a citizen of the United States, sir?

THE DEFENDANT: No.

THE COURT: This is very important for you to understand. If you're not a citizen of the United States and you enter into this guilty plea, what that means to you is that you will be deported back to your country of origin. Is that understood by you?

THE DEFENDANT: Yes, your Honor.

THE COURT: And in doing so, you would then not be in a position to say, well, you know what, Judge, I didn't know that by entering into this guilty plea and by admitting that I am guilty of this crime that I would be sent back to the country that I was born in because I can tell you now, you will be. And I don't know whether in fact—and I'm saying all of this to make it crystal clear to make sure you understand. I don't know whether in fact you came here as a child, I don't know whether you have any remaining family members there, but, certainly, by entering into this guilty plea, it will cause you to be deported back to your country of origin. Is that Understood by you, sir?

THE DEFENDANT: Yes, your Honor.

THE COURT: Have you had a discussion with your attorney about this

¹It appears that the Court Reporter inadvertently misspelled the defendant's name, a fact which has no bearing on the ultimate determination of the instant motion.

matter?

THE DEFENDANT: Yes, your Honor.

Here, the record truly speaks for itself. The Court painstakingly discussed the fact that the defendant would be deported as a result of entering a guilty plea in this case. It was particularly important that the defendant be made aware of the immigration consequences of pleading guilty in this case because the defendant had already been convicted of a previous felony. As a result, the Court was emphatic in its discussion with the defendant about the fact that he would be deported as a result of this case. Even to the extent that the Court explained to the defendant that he would be deported to his country of origin even if he had not been there since he was a child and whether or not he had any family still living in that foreign country. The Court advised the defendant that entering a guilty plea would unequivocally result in his deportation in the presence of his trial counsel.

Further, the defendant also stated on the record that he had spoken with his trial counsel regarding the immigration consequences of pleading guilty to charges in this indictment. There was no representation, at that time, that trial counsel had advised the defendant of anything other than the fact that he would be deported as a result of this plea. It would stand to reason that if the defendant had received contrary information regarding the immigration consequences of his plea, he would have stated so at the time when the Court indicated he would be deported as a result of the guilty plea. The defendant's claims raised

herein lack credibility. The defendant's co-defendant in this case went to trial and was acquitted by the jury, a fact noted the defendant's moving papers. However, that fact does not provide a basis for the defendant to take back his lawful guilty plea. The plea minutes reflect a careful and thorough explanation and discussion with the defendant about his rights. The record reflects the defendant's plea was knowing, voluntary and intelligent. There is no legal basis to vacate the defendant's guilty plea. Accordingly, the defendant's motion is denied in its entirety. It is hereby,

ORDERED, the defendant's motion is denied in its entirety. It is further,

ORDERED, the defendant's right to appeal from this order is not automatic except in the single instance where the motion was made under CPL §440.30(1-a) for forensic DNA testing of evidence. For all other motions under Article 440, you must apply to a Justice of the Appellate Division for a certificate granting leave to appeal. This application must be filed within 30 days after your being served by the District Attorney or the court with the court order denying your motion. It is further,

ORDERED, the application must contain your name and address, indictment number, the questions of law or fact which you believe ought to be reviewed and a statement that no prior application for such certificate has been made. You must include a copy of the court order and a copy of any opinion of the court. In addition, you must serve a copy of your application on the following parties;

APPELLATE DIVISION, 2ND Department

45 Monroe Place
Brooklyn, NY 11201

Kings County Supreme Court
Criminal Appeals
320 Jay Street
Brooklyn, NY 11201

Kings County District Attorney
Appeals Bureau
350 Jay Street
Brooklyn, NY 11201

This shall constitute the decision and order of this Court.

ENTER,
[Signature]
J. S. C.
HON. DEBORAH A. DOWLING
JUSTICE SUPREME COURT

ENTERED
NOV 26 2014
NANCY T. SUNSHINE
COUNTY CLERK