

People v Madison

2018 NY Slip Op 33808(U)

September 6, 2018

Supreme Court, Dutchess County

Docket Number: 155/2017

Judge: Edward T. McLoughlin

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COUNTY COURT : DUTCHESS COUNTY

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PRESENT: HON. EDWARD T. McLOUGHLIN
Dutchess County Court Judge

DECISION AND ORDER
CPL §440.10 MOTION

THE PEOPLE OF THE STATE OF NEW YORK

Ind No. 155/2017

Plaintiff,

WILLIAM V. GRADY, ESQ.
District Attorney by:
Bridget Rahilly Steller, Esq.
Attorney for Plaintiff

- against -

KEVIN MADISON,

Defendant.

KEVIN MADISON
Defendant, pro se

Notice of Motion _____ X
Affidavit in Support _____ X
Affirmation in Answer _____ X
Reply Affidavit _____ X

The foregoing documents were considered in deciding this motion.

BACKGROUND

On November 21, 2017, the Dutchess County Grand Jury voted Indictment No. 155/2017 charging the defendant with Criminal Possession of a Controlled Substance in the Third Degree, a Class B Felony (Penal Law §220.16[1]); Criminal Possession of a Controlled Substance in the Fourth Degree, a Class C Felony (Penal Law §220.09[1]) and Criminal Possession of Marijuana in the Fourth Degree, a Class A Misdemeanor (Penal Law §221.15).

These charges arose out of the defendant's arrest in the Town of Pleasant Valley, on June 15, 2017. The defendant appeared

before this Court on January 22, 2018, at which time the second count of the indictment was reduced to Attempted Criminal Possession of a Controlled Substance in the Fourth Degree, a Class D Felony (Penal Law §110.00 and §220.09[1]). The defendant pled guilty to the reduced second count of the indictment in full satisfaction of the remaining counts of the indictment. The defendant waived his right to appeal during the plea allocution process.

On February 16, 2018, the defendant appeared for sentencing. At that time, he was arraigned as a second felony offender, and admitted the same. He was then sentenced to a four-year determinate state prison sentence to be followed by two years of post release supervision.

It is this Court's understanding that the defendant has filed a notice of appeal, but has failed to perfect the same as of the date of this decision.

DEFENDANT'S CLAIMS

The defendant seeks to vacate his judgment of conviction alleging that he was misinformed by his attorney regarding the laboratory reports and the amount of controlled substances he was alleged to have possessed.

He further claims that the laboratory report was in conflict with the information contained in the felony complaint, upon which he was originally arraigned.

Also, he alleges that a purported mishandling of the evidence demonstrates that there has been prosecutorial misconduct in the prosecution of his case.

Lastly, the defendant seeks a hearing pursuant to CPL §440.30.

DISCUSSION

In deciding the defendant's last claim first, his application for a hearing pursuant to CPL §440.30 is denied. The defendant must show that non-record facts sought to be established that are material and would entitle him to the relief sought. The defendant has failed to do so in this matter. People v. Satterfield, 68 NY2d 796.

Where the defendant's claims can be determined on the record and the written submissions, the Court is not required to grant a hearing upon the post-judgment motion. Satterfield, *supra*.

The defendant's allegation that he was "misinformed" by his attorney does not fall within one of the enumerated provisions of CPL §440.10.

In reviewing the defendant's arguments, it would appear that his claim is better characterized as one of ineffective assistance of counsel.

In evaluating ineffective assistance of counsel claims, the Court of Appeals has consistently applied a "flexible approach". People v. Benevento, 91 NY2d 708. As long as the evidence, the

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law and the circumstances of a particular case viewed in the totality at the time of the representation, revealed that the attorney provided "meaningful representation", a defendant's constitutional rights to the effective assistance of counsel has been met. People v. Baldi, 54 NY2d 137.

The defendant's claim is contrary to the record in these proceedings.

At the time of the defendant's plea allocution, he indicated his satisfaction with his attorney and the plea agreement.

The Court: Have you discussed your guilty plea with your attorney and discussed with her what possible defenses, strategies and arguments would have been at a trial?

The defendant: Yes, your honor.

The Court: Are you satisfied with your attorney's advice and representation?

The defendant: Yes, your honor.

The Court: Are you pleading guilty today voluntarily?

The defendant: Yes, your honor.

The Court: Do you feel that you have been threatened or forced by anyone into pleading guilty?

The defendant: No, your honor.

When the defendant has made such a statement under oath, he should not be later heard to complain of ineffective assistance of counsel or that he was misled by counsel, especially where defense counsel has negotiated a favorable plea agreement for him. People v. Torres, 302 AD2d 481 (2nd Dept. 2003). In this case, the

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defendant was faced with a possible prison sentence of up to 12 years as a second felony offender.

Where a guilty plea is entered, it marks the end of a criminal case, and not the gateway to further litigation. People v. Taylor, 65 NY2d 1.

The record does not provide any support for the defendant's conclusory assertion that he was misled by his counsel. The record demonstrates that the defendant's plea was a knowing and voluntary admission of guilt and that he committed the crime in question. See People v. Seger, 171 AD2d 892 (2nd Dept. 1991) appl. disp. 79 NY2d 1080.

The defendant's claim that there was prosecutorial misconduct because the drugs analyzed by the New York State Police laboratory were allegedly different than those referenced in the felony complaint filed at the time of his arrest is without merit.

A review of the felony complaint filed against this defendant indicates that he is alleged to have possessed six individually packaged glassine envelopes each containing a white powder for an approximate total of 2.4 grams, as well as, one plastic bag with an unknown white substance in it. It was this unknown white substance which was analyzed by the New York State Police laboratory and confirmed to be cocaine, a narcotic drug, with an aggregate weight of 7.683 grams (1/8 of an ounce or more).

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The felony complaint clearly demonstrates that the defendant was accused of possessing drugs packaged in two separate and distinct packaging materials. The fact that the prosecution only had the one quantity of drugs laboratory tested does not support defendant's claim of prosecutorial misconduct or a mishandling of evidence. There is no issue surrounding the New York State Police laboratory report regarding the drugs alleged to have been possessed by the defendant in the felony complaint. Drugs he admitted under oath to this Court to have possessed.

For the foregoing reasons, the defendant's motion is denied in its entirety.

This constitutes the decision and order of the Court.

APPEAL RIGHTS

The defendant is hereby advised of his right to apply to the Appellate Division, Second Department, 45 Monroe Place, Brooklyn, New York 12201 for a certificate granting leave to appeal from this Order. That application must be made within thirty days of service of this Order/Decision. Upon proof of financial inability to retain counsel and to pay the costs and expenses of the appeal, the defendant may apply to the Appellate Division for the assignment of counsel and for leave to prosecute the appeal as a poor person and to dispense with printing. Application for poor person relief will be entertained only if and when permission to

appeal or a certificate granting leave to appeal is granted. (22
NYCRR 671.5)

Dated: Poughkeepsie, New York
September 2, 2018



HON. EDWARD T. McLOUGHLIN
COUNTY COURT JUDGE

TO: Bridget Rahilly Steller,
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