

People v Houston

2019 NY Slip Op 33966(U)

November 21, 2019

County Court, Westchester County

Docket Number: 18-0216

Judge: George E. Fufidio

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

-against-

SHAQUAN HOUSTON

Defendant.

-----X
FUFIDIO, J.

DECISION AND ORDER

Indictment No.: 18-0216 *MP*

FILED

NOV 21 2019

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Upon consideration of the Defendant's instant application seeking an order of the Court to vacate the convictions imposed under the instant indictment pursuant to Section 440.10 of the Criminal Procedure Law, the Court has considered the Defendant's moving papers, the People's Affirmation in Opposition and Memorandum of Law and exhibits and the Defendant's Reply.

Upon these submissions, the motion is decided as follows:

CASE HISTORY

The facts of this case, in pertinent part, are that the Defendant was indicted on the instant indictment for events that occurred on November 12, 2017 when the Defendant, along with two other people, approached their victim outside of a CVS pharmacy in Mount Vernon, New York; grabbed him and one of the parties slashed him with a dangerous instrument resulting in cuts to the jacket he was wearing and lacerations on his body. The three co-defendants then stole the victim's jacket and cash. The incident was captured by surveillance video at the CVS pharmacy. The defendant was positively identified as one of the perpetrators and as part of their investigation into this robbery and other crimes that the Defendant was suspected of committing,

which included other theft offenses, the police obtained a search warrant for the Defendant's residence. The warrant was executed on February 9, 2018 and the Defendant was present. The Defendant was also arrested that day. After his arrest, the Defendant made statements placing himself at the scene during the robbery, but he did not implicate himself any further.

On February 16, 2018, the Defendant was charged by the instant indictment and he was arraigned upon it on March 6, 2018. He filed an *omnibus* motion wherein he sought, *inter alia*, the dismissal of the indictment; though he did not specifically raise the issue of whether or not the indictment was signed by the foreperson, suppression of his statements and identification testimony and he challenged his arrest as violative of *Payton v New York*, 445 US 573 [1980]. Of relevance to the instant CPL 440.10 motion, on July 3, 2018, this Court rendered its decision on the motions, finding that upon the issues raised by the Defendant, there was no basis to dismiss the indictment and that the arrest was not improper even though the police had a search warrant and not an arrest warrant.

On July 17, 2018, the Defendant pleaded guilty before this Court (Fufidio, J.) to a negotiated plea of attempted robbery in the second degree in exchange for a promised sentence of five years incarceration with five years post-release supervision. The Defendant executed a written waiver of his right to appeal and, although, the Defendant did not attach a copy of his plea minutes, it is this Court's practice to obtain an oral waiver of a defendant's right to appeal and to also have a defendant withdraw any motions, pending or decided and would not have deviated from that standard practice in this case. The Defendant was sentenced, as promised, on August 21, 2018. The Defendant failed to file a timely notice of appeal and on May 6, 2019 he submitted a *pro se* motion to the Appellate Division: Second Department asking to extend the

time by which he had to file a notice of appeal. The motion was granted on July 22, 2019 (*People v Houston*, Docket No. 2019-05743 [2nd Dept. 2019]).

The instant motion was received on July 19, 2019. In it the Defendant now argues that his conviction should be vacated because the indictment is jurisdictionally defective since it does not contain the foreperson's signature, it "fails to provide sufficient information" and it is "not supported by the record." In addition, he claims to have been arrested without probable cause.

LEGAL ANALYSIS

The Defendant now makes two claims which he feels entitle him to vacatur of the conviction under the instant indictment; one, that the court lacked jurisdiction over him because the grand jury foreperson supposedly did not sign the indictment, that it fails to provide sufficient information and that it is not supported by the record and two, that he was improperly arrested. These are both claims for which sufficient facts appear upon the record and thus could have been raised on an appeal and accordingly, the Court must deny the Defendant's motion (CPL 440.10[2][c]).

The first claim can be easily disposed of by a simple look at the indictment of record, which the People attached as an exhibit, and a reading of the grand jury minutes. The indictment itself clearly shows that there is a signature on the foreperson's line which corresponds with the foreperson's name.¹ To the extent that the indictment being "not supported by the record" means that there was insufficient evidence presented to the grand jury, although the Court in its *omnibus* Decision and Order determined that there was sufficient evidence to support the indictment, that claim was waived by the defendant's guilty plea (*People v Feidner*, 109 AD3d 1086 [2013]) and

¹ In addition to the mandate set forth in CPL 440.10[2][c], the Court, had it reached the merits of this matter would have decided that the Defendant's claim is refuted by unquestionable documentary proof and thus would have used its discretion to summarily deny this claim (CPL 440.30[4][c]).


to the extent that he is complaining of the indictment's facial sufficiency, other than the supposed lack of the foreperson's signature, that is a non-waivable jurisdictional defect capable of being raised on appeal, despite a waiver of appeal at a guilty plea (*People v Dreyden*, 15 NY3d 100 [2010], CPL 440.10[2][c]).

Regarding the second claim, the Defendant raised this issue in his *omnibus* motion and the Court decided, upon the uncontested fact that the defendant was arrested in his own home when the police were there searching it pursuant to a search warrant, that the lack of an arrest warrant was immaterial (*People v Denis*, 91 AD3d 1301 [4th Dept. 2012]). That decision is also wholly a matter of record, though possibly not capable of being raised on appeal because when the Defendant pleaded guilty he withdrew all previous motions, pending or decided and when this Court determined that his plea was knowing, intelligent and voluntary he waived his right to challenge the Court's determination of this branch of his *omnibus* motion (*People v Beavers*, 136 AD2d 713 [2nd Dept. 1988]).² In any event, an illegal arrest would not have divested this Court of its jurisdiction and in and of itself may not remain for appeal following a guilty plea (*People v Thomas*, 74 AD2d 317 [2nd Dept. 1980]). Because this claim can also be determined from the face of the record, it is likewise denied pursuant to CPL 440.10[2][c].

Based upon the foregoing, the Defendant's instant application seeking to set aside his conviction under the instant indictment pursuant to CPL 440.10 is summarily denied.

The foregoing shall constitute the Decision and Order of the Court.

Dated: White Plains, New York
November 21, 2019



Honorable George E. Fufidio
Judge of the County Court

² Moreover, although the Defendant claims in his reply that his plea was not knowing, intelligent or voluntary, he did not raise the issue initially and even in his reply he fails to demonstrate why he thinks this is so.

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