

**People v Williams**

2019 NY Slip Op 34102(U)

October 31, 2019

Supreme Court, Westchester County

Docket Number: 18-0530

Judge: Barry E. Warhit

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

-against-

**DECISION & ORDER**  
Indictment No.: 18-0530

PATRICK WILLIAMS,  
Defendant.  
-----X  
WARHIT, J.

**FILED** 

OCT 31 2019

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

Patrick Williams ("Defendant") moves to withdraw previously entered pleas of guilty to five counts of burglary in the third degree. The People oppose the relief sought in its entirety. In contemplation of this motion, this Court read and considered the following papers:

*Notice of Motion to Withdraw Plea Pursuant to CPL 220.60, Affidavit of Patrick Williams in Support of Motion to Withdraw Plea Pursuant to CPL 220.60; Affirmation of Gary R. Rick, Esq. in Support of Motion to Withdraw Plea Pursuant to CPL 220.60; Affidavit in Opposition of ADA Roger T, Dean, Memorandum of Law and Exhibit 1 (Transcript of the Plea Proceeding)*

Relevant Procedural Background

Defendant is charged under the instant indictment with five counts of Burglary in the third degree as well as three counts of Grand Larceny in the third degree, four counts of Criminal Mischief in the third degree and Petit Larceny in relation to commercial burglaries committed on May 12, 2017, July 2, 2017, July 6, 2017<sup>1</sup> and August 3, 2017.

On March 7, 2018 Defendant appeared before this Court in the Trial Assignment

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<sup>1</sup>Defendant committed two commercial burglaries on July 6, 2019.

Part ("TAP") personally and by counsel Edward Barrett,, Esq. of the Westchester County Legal Aid Society. On this date, Defendant accepted a negotiated plea offer under which, in exchange for pleas of guilty to each of the five counts of Burglary in the third degree, Defendant, who is a predicate felon, was promised a sentence of, *inter alia*, indeterminate terms of imprisonment of 3 ½ to 7 years concurrent to one another and concurrent to then pending criminal matters in Brooklyn and the Bronx (Affidavit in Opposition, Exhibit 1, Transcript of the Plea Proceedings ("Plea Minutes"), p. 2-3).

Defendant was placed under oath whereupon he confirmed his English language fluency as well as counsel's representation that he wanted to accept the above described plea deal (*Id.*, p. 3, lines 15-25 and p. 4, lines 1-2). Defendant also denied having used drugs, alcohol or medication on the date of the plea (*Id.*, p. 4, lines 17-19).

In contrast to Defendant's present claims, under oath and prior to entering his pleas of guilty, Defendant assured the Court he had been given enough time to speak to his attorney, that counsel had answered all of his questions and he believed his attorney had achieved a "reasonably good deal" for him in light of the charges he was facing (*Id.* at p. 4, lines 3-11). Relevant to the instant motion, this Court advised Defendant: "I don't want an application from you later on that you're blaming [your attorney] for your situation. Can I rely upon your statement, made under oath, that you are fully satisfied with your lawyer's work?" (*Id.*, p. 4, lines 12-15). Significantly, Defendant replied in the affirmative (*Id.* p. 4, line 16).

Defendant's present contention, that he "was not fully informed of the consequences of [his pleas]" or of other options available to him, is belied by the record

of the plea minutes. This Court conduct a searching and careful inquiry of Defendant, who had previous experience with the criminal justice system, before accepting his pleas of guilty. In particular, this Court carefully reviewed Constitutional and other rights Defendant was relinquishing by entering pleas of guilty (*Id.*, pp. 4-5 and p. 6, lines 1-2; *cf.*, Affidavit in Support of Motion to Withdraw Plea Pursuant to CPL 220.60 ("Defendant's Affidavit"), ¶¶ 6-7). Defendant specifically acknowledged awareness that by entering guilty pleas he was giving up his right to a trial and to require the People to prove each and every element of each crime charged beyond a reasonable doubt (*Id.* at p. 4, lines 20-25 and p. 5, line 1). Defendant also expressed clear and unambiguous understanding that, by pleading guilty, he was absolving the People of their obligation to prove the charges and forfeiting his rights to have witnesses called against him, to present witnesses on his own behalf and to testify on his own behalf or, alternatively, remain silent (*Id.*, p. 5, lines 2-25 and p. 6, lines 1-2). Relevant to his motion, Defendant specifically acknowledged that accepting the negotiated plea deal would require him to forego any further exploration of participation in court ordered diversion (*Id.*, p. 14, lines 3-21). Finally, while under oath, Defendant also confirmed his understanding that his guilty pleas would result in five separate convictions for Burglary in the third degree for which he would be sentenced, according to the plea deal, to indeterminate 3 ½ to 7 year prison sentences which would run concurrent to one another as well as to additional criminal charges pending against him in Brooklyn and the Bronx (*see, Id.* at p. 6, lines 3-14).

Moreover, although he claims through the within motion that he entered he felt

pressured at the time he entered his pleas, while under oath during the *voir dire*, Defendant categorically denied anyone had coerced or threatened him to plead guilty and represented he was doing so “freely and voluntarily” (*Id.* at p. 6, lines 15-21; *cf.*, Defendant’s Affidavit, ¶ 7(b)). Further, despite his present claim of innocence, during the plea allocution Defendant explicitly admitted, under oath, that on five separate occasions he unlawfully entered commercial establishments with the intention of committing a crime in each (*Id.* at p. 16, lines 22-24 and pp. 11-13; *cf.* Defendant’s Affidavit, ¶ 7(a)).

It is worthy of comment that during the plea *voir dire*, this Court highlighted for Defendant that in addition to giving up trial rights by accepting the negotiated plea deal he was forfeiting separate appellate rights (*Id.* at p. 9, lines 1-19). In doing so, the Court explained the purpose and function of the appellate court and advised Defendant that, as a condition of the negotiated plea deal, he would be required, to the extent permitted by law, to waive his appellate rights (*Id.*). Defendant acknowledged he had spoken to his counsel about this waiver and assured the Court he understood his appellate rights and was freely and voluntarily waiving his right to appeal (*Id.*).

Prior to accepting Defendant’s guilty pleas, this Court also inquired as to whether he required any additional time to seek guidance from an attorney concerning the needed this accommodation and stood silently as his counsel pronounced Defendant had previously advised Defendant of the relevant immigration consequences (*Id.*, p. 10, lines 1-13).

Of particular import to Defendant’s present claim-- that he was not fully informed

as to the consequences of entering a plea of guilty or that any other options were available to him— it is significant that Defendant is not an ingenué to the criminal justice system. Indeed, during the plea *voir dire*, Defendant's previous criminal conviction for Burglary in the third degree in Queens County, New York on January 30, 2014 was addressed to the extent it rendered him a predicate felon for purposes of sentencing (*Id.* at p. 13, lines 3--25 and p, 14, lines 1-2). It is further relevant to Defendant's present claims that he was not fully informed of his options and the consequences of pleading guilty that, during the plea allocution, Defendant represented, under oath, that he did not have any questions for the Court (*Id.* at p. 15, lines 3-7).

Based upon his answers and demeanor throughout the plea *voir dire*, this Court found Defendant had made his guilty pleas freely, knowingly and voluntarily (*Id.* at p. 15, lines 8-11). The Court set May 10, 2019 as the date on which Defendant was to be sentenced (*Id.*, p. 15, lines 10-11). However, Defendant was not sentenced as scheduled as his previous counsel was relieved and present counsel was assigned when Defendant indicated an intention to withdraw his previously entered pleas of guilty.

On October 17, 2019 Defendant filed the within counseled motion seeking to withdraw his pleas of guilty on grounds that he is "not guilty of any of the charges", "was not given enough time to consider the consequences of [his] plea of guilty . . . , nor to consider any other options that I may have otherwise had at the time" of his guilty pleas (Defendant's Affidavit, ¶ 7). Defendant also challenges the noticed statements and certain material evidence which the People would have sought to introduce at trial (*Id.*).

By Affirmation in Opposition and Memorandum of Law, filed October 25, 2019, the People oppose Defendant's application in its entirety.

#### Findings of Law

Guilty pleas are intended to signify the end of a criminal case and are not anticipated to serve as a "gateway" to further litigation (see, *People v. Hansen*, 95 NY2d 227, 230 [2000]; and see, *People v. Taylor*, 65 NY2d 1, 5 [1985]). Although applicable statute sets forth a procedure by which a defendant may move to withdraw a previously entered plea of guilty, it is well settled that a plea which is knowingly, voluntarily and intelligently made should stand (see, *Elmendorf*, 45 AD3d 858, 859 [2d Dept. 2007]; and see, *Fiumefreddo*, 82 NY2d 536). In fact, the law is clear that courts are to vacate pleas sparingly and only in the face of evidence of innocence or where fraud or mistake played a role in inducing the plea (CPL § 220.60[3]; and see, *People v. Alexander*, 97 NY2d 482 [2002]; *Elmendorf*, 45 AD3d at 859; *People v. Smith*, 54 AD3d 879 [2d Dept. 2008]; and see, *People v. Pillich*, 48 AD3d 1061 [2008]). No such circumstance is present in the instant case.

In deciding whether to exercise discretion and permit a defendant to withdraw a plea of guilty, a court is "entitled to rely on the record [of the plea allocution] to ascertain whether any promises, representations, implications and the like were made to the defendant" and induced his plea of guilty" (*People v. Ramos*, 65 NY2d 640, 642 [1984](internal citations omitted)). In this case, the plea minutes conclusively establish that Defendant admitted his guilt freely, knowingly and voluntarily after the Court made

a proper and searching inquiry into his understanding of the proceedings and the rights he was forfeiting by entering a plea of guilty (see, *Alexander*, 97 NY2d 482; *Elmendorf*, 45 AD3d at 859; *Smith*, 54 AD3d 879; and see, *Pillich*, 48 AD3d 1061). The only promise of inducement offered to Defendant is the negotiated sentence promise which this Court is prepared to impose. Moreover, despite Defendant's present claims, under oath during the plea *voir dire*, he denied his pleas were the result of coercion or force (Plea Minutes, p. 6, lines 15-20).

In addition, the record also debunks Defendant's present claim that he felt pressured to enter the plea and did so absent having ample time to confer with counsel. The transcript of the plea proceeding demonstrates Defendant entered his plea after this Court recalled the case (*Id.*, p.2, lines 1-4). Additionally, during his plea, Defendant explicitly acknowledged having had sufficient time to speak to counsel about his decision to enter the plea and represented that counsel had answered all of his questions and had achieved a "good deal" for him (*Id.*, p. 4, lines 3-16).

Even accepting Defendant's claim, that he felt stressed or pressured at the time he entered his admissions of guilt, at face value, this does not give rise to a basis under the law to permit him to withdraw his pleas of guilty (see, *People v. Green*, 75 NY2d 902 [1990]; *People v. Montgomery*, 27 NY2d 601 [1970]). Situational pressure created when a defendant must decide whether to enter a plea of guilty and accept a negotiated sentence or go to trial does not qualify as "undue pressure" and does not undermine the voluntariness of a guilty plea (see, *People v. Sparbanie*, 158 AD3d 942, 944 [3d Dept. 2019]; and see, *People v. Merck*, 242 AD2d 792 [3d Dept. 1997]). This is true



even if, as Defendant alludes, his attorney was the source of the alleged pressure (see, *People v. Mann*, 32 AD3d 865 [2d Dept. 2006]; see also, *People v. Manor*, 27 NY3d 1012, 1014 [2016]; and see, *People v. Burdo*, 1 AD3d 793, 794 [3d Dept. 2003]).

For purposes of the within motion Defendant alleges he lacked full understanding of the plea deal and did not know other options were available. This claim is wholly contradicted by the transcript of the plea proceeding and by the affidavit Defendant submitted in support of the within motion in which he acknowledges specific understanding of many facets of the court proceeding and reveals that, prior to his entering his plea, he and prior counsel had approximately ten conversations some of which included discussions about whether to resolve the within indictment by plea or pursue another course of action (Plea Minutes, pp. 3-15; Defendant's Affidavit, ¶ 7(b)).

Through the within motion Defendant advances self-serving, factually unsupported conclusions regarding the admissibility and relevance and import of certain statement and material evidence he anticipates the People would have sought to rely upon if the matter had proceeded to trial. Defendant's theories are without legal moment as "[a] defendant is not entitled to withdraw his plea merely because he discovers that his calculus misapprehended the quality of the State's case" (*People v. Jones*, 44 NY2d 76, 81 [1978]; see, *People v. Wright*, 182 AD2d 849, 849-850 [2d Dept. 1992])(denying a defendant's application to withdraw a plea of guilty upon a subsequent discovery that there was no fingerprint evidence linking him to the charged crime).

Finally, to the extent this motion may be read to raise a claim of ineffective assistance of counsel, it bears noting that previous counsel achieved a very favorable

disposition for Defendant. Although Defendant entered pleas of guilty to five counts of Burglary in the third degree, the sentence promise assures Defendant will receive concurrent sentences on each of the counts charged in the indictment and that these sentences will run concurrent to additional charges that are or had been pending in Brooklyn and the Bronx (Plea Minutes, pp.2-3 and p. 6-7). Nothing in the record demonstrates Defendant's plea was improvident.

Accordingly, and based upon the foregoing, this Court finds that it is an appropriate exercise of its discretion to deny Defendant's application for the return of his previously entered pleas of guilty and to do so without a hearing (*see, People v. Hansen*, 269 AD2d [2d Dept. 2000] citing *People v Rosa*, 239 AD2d 364 [2d Dept. 1997]); *People v. Avery*, 18 AD3d 244 [1st Dept. 2005]; *People v. Sain*, 261 AD2d 488, 489 [2d Dept. 1999] citing CPL § 220.60[3]).

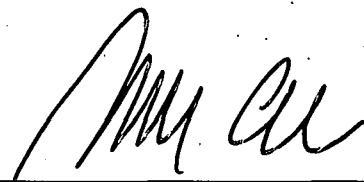
It is therefore,

ORDERED, that Defendant's motion, pursuant to CPL § 220.60 is denied in its entirety; and it is further

ORDERED, that Defendant shall be sentenced according to the terms and conditions of the negotiated plea deal.

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

Dated: White Plains, New York  
October 31, 2019



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Hon. Barry E. Warhit  
Supreme Court Justice

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