

People v Reid

2020 NY Slip Op 34771(U)

December 18, 2020

County Court, Westchester County

Docket Number: Ind. No. 0955-2019

Judge: David S. Zuckerman

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COUNTY COURT STATE OF NEW YORK
COUNTY OF WESTCHESTER
-----X
THE PEOPLE OF THE STATE OF NEW YORK

FILED ↗

DEC 27 2020

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

-against-

DECISION AND ORDER

Ind. No. 0955-2019

SHAQKUR REID,
Defendant.
-----X
ZUCKERMAN, J.

By Notice of Motion dated November 19, 2020, Defendant moves to withdraw his previously entered pleas of guilty to two counts of Robbery in the First Degree and one count of Attempted Robbery in the First Degree. In an Affirmation in Opposition, dated December 7, 2020, the People oppose the application.

Background

On October 16, 2019, Defendant was arraigned on the instant indictment charging him with two counts of Robbery in the First Degree, two counts of Attempted Robbery in the First Degree, two counts of Robbery in the Second Degree, two counts of Attempted Robbery in the Second Degree, two counts of Assault in the Second Degree and other related charges. He pled not guilty. The charges relate to three separate incidents in 2019 wherein Defendant, acting in concert with one other,¹ *inter alia*, robbed a twelve year old child at gunpoint and struck a 61-year old man in the face with a gun multiple times while attempting to rob him. Defendant was

¹The co-defendant has pled guilty and been sentenced.

later recorded on video surveillance using a debit card which he had stolen at gunpoint. Defendant's criminal history includes a 2017 conviction for Grand larceny in the Fourth Degree as a Juvenile Delinquent and a 2018 Youthful Offender adjudication for Robbery in the First Degree.

On December 4, 2019, Defendant appeared before this court and, in the presence of counsel, entered pleas of guilty to two counts of Robbery in the First Degree, and one count of Attempted Robbery in the First Degree in full satisfaction of the twelve count indictment. During the plea proceedings, the court informed Defendant of its promise to sentence him to a determinate term of seven (7) years in state prison followed by five (5) years of post-release supervision on each count to run concurrently with each other. See generally, Transcript of the Plea Proceeding ["Plea Minutes", or "Id."], December 4, 2019 (Zuckerman, J.).

Prior to accepting Defendant's pleas of guilty, the court conducted a thorough plea voir dire. In connection therewith, Defendant was first placed under oath (Id., p. 4, lines 19-25; p. 5, lines 1-10). Defendant then assured the court he wanted to avail himself of the above discussed negotiated plea deal (Id., p. 5, lines 11-25). Specifically, Defendant replied in the affirmative when asked both "did you hear your attorney's application that you want to plead guilty to three separate charges, Robbery in the First Degree, Robbery in the First Degree

again, and Attempted Robbery in the First Degree?" and "[i]s this what you want to do?" (Id. at p. 7, lines 11-19).

Prior to permitting Defendant to enter a plea of guilty, the Court inquired of Defendant as to whether he had been given enough time to confer with counsel about his decision to enter guilty pleas and whether he was satisfied with the representation provided by his attorney (Id., p. 7, lines 20-25 and p. 8, line 1). Defendant answered yes to each inquiry (Id.). The court also inquired whether Defendant had ingested any drugs, medication or alcohol that day (Id., p. 10, lines 8-11). Under oath, Defendant denied he had used any of these substances (Id., p. 10, line 12).

The court then reviewed some of the Constitutional and other rights Defendant was required to relinquish in order to avail himself of the negotiated plea deal. In particular, the court informed Defendant, who acknowledged he understood, that by entering pleas of guilty he would be giving up his right to a trial, by a judge or jury, as well as his right to require the People to prove each and every element of a crime charged beyond a reasonable doubt (Id. at p. 8, lines 10-25, p. 9, lines 1-13). Defendant also unambiguously indicated he understood that, by entering the pleas of guilty, he was forfeiting his trial rights to confront any evidence presented against him, present evidence on his own behalf, testify on his own behalf, and remain silent.

Additionally, Defendant indicated a clear understanding of this court's sentencing promise, namely that he would be convicted

of two counts of Robbery in the First Degree and one count of Attempted Robbery in the First Degree and be sentenced, *inter alia*, to seven (7) years in state prison followed by a five (5) year period of post-release supervision (Id., p. 9, lines 22-25, p, 10, lines 1-2). Defendant categorically denied that his plea was the result of a promise made by anyone other than the court or that he had been threatened or forced to plead guilty (Id., lines 4-7). Defendant maintained, unequivocally, that his plea was being entered voluntarily (Id., p. 10, lines 13-19; cf., Affirmation of Pavel Williams, p. 3.).

During the plea voir dire, this court specifically informed Defendant that, as a condition of his negotiated plea and to the extent permitted by law, he was asked to waive his appellate rights. After affording gave him a detailed explanation of the purpose and function of the appellate court, Defendant assured the court that he had discussed this waiver with counsel and was, therefore, freely and voluntarily waiving his right to appeal (Id, p.11, line 6 - p. 13, line 17). After the above described searching inquiry, the court permitted Defendant to admit, with factual detail, to the conduct he committed showing his guilt of Robbery in the First Degree (two counts) and Attempted Robbery in the First Degree (Id., p.14, line 7 - p.15, line 20).

Further, of particular import to the within application, prior to the court accepting the admission of guilt, Defendant was specifically asked whether he had "understood everything that's

happened here in court today?" He responded "yes." (Id., p. 15, lines 21-23). Finally, as its final allocution question, the court inquired "Mr. Reid, is that what you want me to do, is (sic) accept your three pleas of guilty, two counts of robbery in the first degree and one count of attempted robbery in the first degree. Defendant responded "yes." (Id., p. 16, lines 5-9). Upon completion of Defendant's thorough allocution, the court found he had entered knowing, voluntary and intelligent pleas of guilty (Id., p. 16, lines 10-12).

Upon acceptance of Defendant's pleas of guilty, the court set a sentencing date of January 15, 2020 (Id., p. 16, line 12). On that date, sentencing did not proceed as Defendant indicated that he might want to move to withdraw his previously entered pleas of guilty. Upon this representation, the court relieved prior counsel and appointed Rachel J. Filasto, Esq. to assist Defendant in pursuing this application. After numerous adjournments at Defendant's request, on November 19, 2020, Ms. Filasto filed the instant motion. In it, Defendant seeks permission to withdraw his pleas of guilty on two grounds: that he was under "extreme pressure" from his prior attorney to plead guilty and because he is schizophrenic and "the voices" told him to plead guilty (and, in fact, "the voices" tell him to do bad things). By Affirmation in Opposition and Memorandum of Law, filed December 7, 2020, the People oppose Defendant's application in its entirety.

Discussion

A guilty plea is intended to signify the end of a criminal case and is not intended to serve as a "gateway" to further litigation (see, *People v Hansen*, 95 NY2d 227, 230 [2000]; *People v Taylor*, 65 NY2d 1, 5 [1985]). The decision whether to grant a defendant's application to withdraw his plea of guilty rests squarely in the discretion of the trial court (CPL §220.60[3]; see *People v Alexander*, 97 NY2d 482 [2002]; *People v Elmendorf*, 45 AD3d 858, 859 [2d Dept 2007]). Although the statute contemplates a procedure by which a defendant may move to withdraw a previously entered plea of guilty, it is well settled that such application should be granted sparingly and only in the face of significant evidence of innocence or where fraud or mistake played a role in inducing the plea (*People v Smith*, 54 AD3d 879 [2d Dept 2008]; see also *People v Pillich*, 48 AD3d 1061 [2008]). The within Defendant does not profess his innocence. Nor does he allege that his plea of guilty is the product of fraud or mistake.

As a general rule, a plea of guilty which is entered knowingly, voluntarily and intelligently should be upheld (see *People v Elmendorf*, *supra*, at 859; see also *People v Fiumefreddo*, 82 NY2d 536 [1993]). In this instance, the plea minutes amply demonstrate Defendant admitted his guilt during a comprehensive plea allocution during which, under oath, he indicated his understanding of the proceedings and of the many rights he was relinquishing by entering a plea of guilty (Plea Proceeding, pp. 2-

16). Further, the minutes demonstrate Defendant categorically acknowledged his complete satisfaction with his plea counsel (Id., 7, lines 20-25 and p. 8, line 1).

Notwithstanding the pre-plea colloquy, Defendant moves to withdraw his guilty pleas. The first argument set forth in Defendant's motion is that he was previously diagnosed with schizophrenia (Affirmation of Rachel J. Filasto, Esq., page 3). Defendant asserts that he received this diagnosis "at a very young age," adding that he sometimes hears voices and that "the voices" told him to say "yes" or "no" to the questions asked of him during the plea voir dire. (Affidavit of Defendant, page 2). Curiously, Defendant does not submit written proof of his alleged medical diagnosis nor supply any basis upon which this court could or should conclude that Defendant's alleged schizophrenia prevented him from entering a knowing and voluntary plea of guilty. Perhaps most salient, however, are Defendant's own words - set forth in his Pre-sentence Investigation Report. First, in the "Social Circumstances - Physical and Mental Health" section of the Report, the Probation Officer/Author writes that Defendant "denied a history of mental health issues. He further denied a history of psychiatric hospitalizations or evaluations and has never been prescribed medication related to a mental health issue" (Pre-sentence Investigation Report, page 8). Similarly, the "Social Circumstances - Family and Environment" section of the Report reads: Defendant "denied the existence of any major dysfunction.

during his upbringing, such as alcoholism, chemical dependency, mental illness...." (Pre-sentence Investigation Report, page 7).² In sum, Defendants argument is belied by his own words.

Defendant next seeks to withdraw his guilty pleas on the grounds that he "felt extreme pressure to enter it" and did not comprehend the proceedings (Affidavit of Defendant, page 2). In support of these claims, Defendant merely indicates he felt he had no choice but to enter a plea of guilty and unknowingly waived his right to trial. (Id., page 2). Notably, Defendant does not dispute that he swore under oath that he voluntarily waived numerous Constitutional rights by pleading guilty, including his right to trial. He also does not submit an affirmation from prior counsel in support of his motion.

In considering a defendant's application to withdraw a previously entered plea of guilty, a court is "entitled to rely on the record 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)). "A plea is voluntary if it represents a choice freely made by a defendant among legitimate alternatives" (Id., citing *People v Grant*, 61 AD3d 177, 182 [2d Dept 2009]). Under the law, a conveyance of facts by the court or counsel, which accurately represents the legal peril and potential

²In the section of the Pre-Sentence Report entitled Defendant's/Respondent's Statement, Defendant is quoted as saying that he "just went around robbing people." Id., at 6.

outcomes a defendant faces, does not constitute threats or coercion (see, *People v Jones*, 44 NY2d 76, 81 [1978] (finding withdrawal of a plea appropriate where the prosecution persuaded defendant to enter it by affirmative deceit and positive misstatements or misrepresentations); cf., *People v Fisher*, 70 AD3d 114 [1st Dept 2009] (finding a plea to have been coerced where the court warned defendant he would not have the opportunity to enter a plea of guilty on a future date and repeatedly informed the defendant that if he declined to enter a plea of guilty that, after trial, he would be sentenced to the maximum permissible penalty).

With respect to Defendant's recent assertion that he was coerced by counsel to plead guilty, the plea minutes conclusively establish that, while under oath, Defendant explicitly indicated he was "completely satisfied with the services and representation provided by" his counsel and that no one "coerced, forced, pressured or threatened [him] in any way in order to get [him] to plead guilty." (Id., page 10). Defendant added that he was pleading guilty "freely and voluntarily," because it was what he wanted to do, and that he was pleading guilty because he was "in fact guilty." (Plea Proceeding, *supra*). See *People v Boria*, 157 AD3d 811, 812 (2018) ("The defendant's claim that his attorney coerced him to plead guilty is belied by his statements under oath acknowledging that he was voluntarily pleading guilty, that he was satisfied with his attorney's representation, and that no one had made any threats or forced him to enter his plea"). With respect

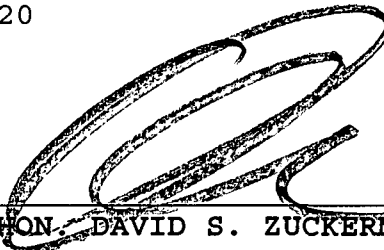
to Defendant's recent allegations that he did not understand the plea proceeding, this claim is likewise contradicted by his sworn statements during the plea allocution. Specifically, in the face of many opportunities to indicate a lack of understanding, Defendant repeatedly assured the court that he understood the proceedings. (Plea Proceedings, *supra*).

Finally, Defendant's allegations that he felt pressure when faced with deciding between proceeding to trial or entering a plea of guilty is an insufficient basis upon which to permit a defendant to withdraw his guilty plea (*see, People v Montgomery*, 27 NY2d 601 [1970]). Situational pressure which arises when a defendant must decide whether to enter a plea of guilty or go to trial does not qualify as "undue pressure" and does not require the return of a knowing and voluntary plea of guilty (*see, People v Sparbanie*, 158 AD3d 942, 944 [3d Dept 2019]; *see also, People v. Merck*, 242 AD2d 792 [3d Dept 1997]). This premise is unchanged where the source of the alleged pressure is an attorney who advises a client to plead guilty to avoid the possibility of a harsher sentence after conviction or even where a relative offers similar advice (*see, People v Mann*, 32 AD3d 865 [2d Dept 2006]; *see also, People v Manor*, 27 NY3d 1012, 1014 [2016]; *see, People v Burdo*, 1 AD3d 793, 794 [3d Dept 2003]). Notably, Defendant did not supply an affidavit from prior counsel setting forth any such application of pressure to plead guilty.

Based upon the foregoing, where, as here, the record of the plea proceeding conclusively demonstrates Defendant entered his pleas of guilty knowingly and voluntarily after a proper and searching inquiry into his understanding of the proceedings and the rights he was forfeiting by entering a guilty plea, and where Defendant indicated his satisfaction with counsel, denied his plea was the result of coercion, force, threats or a promise other than the court's sentence commitment, it is an appropriate exercise of this court's discretion to deny Defendant's motion to withdraw his previously entered pleas of guilty 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]). Accordingly, Defendant's motion is summarily denied in its entirety.

The foregoing constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York
December 18, 2020



HON. DAVID S. ZUCKERMAN, A.J.S.C.