

**People v Prince**

2020 NY Slip Op 35294(U)

May 27, 2020

Supreme Court, Westchester County

Docket Number: Indictment No. 19-0098

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.: 19-0098

KIUUL PRINCE,

Defendant.

**FILED** 

MAY 28 2020

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

-----X  
WARHIT, J.

Defendant moves, by counseled motion, for an Order of this Court granting him permission to withdraw his previously entered plea of guilty to attempted burglary in the second degree. The People oppose this application in its entirety. In contemplation of the relief requested, the Court read and considered the following papers:

*Notice of Motion to Permit Defendant to Withdraw Guilty Plea, Affirmation in Support of Motion to Permit Defendant to Withdraw Guilty Plea and Annexed Exhibits A through C; Affirmation in Opposition and Memorandum of Law*

Relevant Procedural Background

Kiuul Prince ("Defendant") is charged under the instant indictment with burglary in the second degree, grand larceny in the fourth degree and criminal possession of stolen property in the fourth degree. On September 5, 2019 Defendant appeared in the Trial Assignment Part ("TAP") personally and by counsel, Anthony Mattesi, Esq., and entered a plea of guilty to the reduced count of attempted burglary in the second degree in full satisfaction of the indictment and in exchange for a promised sentence of 2 ½ years in state prison followed by three (3) years period of post-release supervision (see *generally*, Transcript of the Plea Proceeding ("Plea Minutes"), September 5, 2019 (Warhit, J.), pp. 2-3).

Before being permitted to enter the above indicated plea of guilty Defendant was subjected to a complete *voir dire* during which he was placed under oath, his English language proficiency was confirmed and he gave this Court assurance that he wanted to enter a plea of guilty to the class D violent felony of attempted burglary in the second degree (*Id.*, p. 3, lines 19-25 and p. 4, line 1-7). Specifically, Defendant acknowledged

he had been given sufficient time to speak to his lawyer and represented he was satisfied with the result counsel had achieved for him (*Id.*, p. 4, lines 8-13).

Significant to the within application, during the plea *voir dire*, this Court informed Defendant: "I don't want an application from you later on where you claim your lawyer was ineffective in some way. Can I rely upon your statement made under oath in open court that you're fully satisfied with [your lawyer's] work?" (*Id.*, p. 4, lines 14-17). Defendant gave the Court his guarantee (*Id.*, p. 4, line 18). The Court also advised Defendant: "I don't want to read in the presentence report that you're innocent or [that your attorney] did a bad job. You can tell me that now. That's fine. We'd stop here. Nothing that you said here today can be used against you. If we go forward with this, I don't want to read that you're claiming innocence or that Mr. Mattesi is a bad lawyer. If I read those things, I'm not keeping my promise, because I'm believing what you're telling me under oath. Do you understand this?" (*Id.*, p. 7, lines 4-13). Defendant replied "yes" (*Id.*, p. 7, line 14).

In advance of reviewing the Constitutional and other substantive rights Defendant would be required to waive in order to avail himself of the negotiated plea deal, the Court confirmed Defendant had not taken any drugs or medication or used any alcohol that could affect his ability to comprehend the court proceeding (*Id.*, p. 4, lines 19-21). Defendant denied having used any such substances (*Id.*, p. 22). The Court then advised Defendant, who acknowledged he understood, that by entering a plea of guilty he would be giving up his right to a trial, whether by a judge or jury, as well as his right to require the People to prove each and every element of each crime charged beyond a reasonable doubt (*Id.* p. 4, lines 23-25 and p. 5, lines 1-8). Additionally, Defendant unambiguously indicated he understood that, by entering a plea of guilty he was satisfying the People's burden of proof and absolving the prosecution of its obligation to call witnesses against him as well as forfeiting his rights to cross-examine the People's witnesses, to present a defense and giving up his right to remain silent (*Id.* at p. 5, lines 9-22). Defendant specifically acknowledged he understood his plea of guilty to attempted burglary in the second degree would result in a conviction just as if he had gone to trial and been found guilty after verdict (*Id.*, p. 5, lines 23-25 and p. 6, line 1).

Significantly, during the plea allocution Defendant expressed clear understanding of the Court's sentencing promise, namely that he would be sentenced, *inter alia*, to a determinate 2 ½ year term in state prison followed by three (3) years of post-release supervision (*Id.*, p. 6, lines 2-5). Defendant categorically denied anyone had forced him to plead guilty (*Id.*, p. 6, lines 6-7). Importantly, Defendant unequivocally maintained he was entering a plea of guilty freely and voluntarily and because he is guilty (*Id.*, p. 6, lines 8-12; *cf.*, Affirmation in Support of Motion to Permit Defendant to Withdraw Guilty Plea of Michael Kevin Duffy, Esq. ("Duffy Affirmation"), ¶¶ 9 and 22).

Of particular relevance to the instant application, throughout the plea proceeding Defendant provided responsive answers to inquiries and repeatedly assured the Court he understood each aspect of the proceeding (*see generally*, Plea Minutes, pp. 1-11;

and see, p. 10, lines 21-25). Moreover, although he was repeatedly offered the opportunity to ask questions of the Court, the prosecutor or his counsel, Defendant declined to do so (see, *Id.* and p.11, lines 1-6).

Of import, during the plea *voir dire*, the Court specifically advised Defendant that, as a condition of the negotiated plea, he was being asked to waive his appellate rights to the extent permitted by law (*Id.*, p. 8, lines 11-14). Before accepting Defendant's waiver, the Court explained the purpose and function of the appellate court, insured Defendant appreciated that by availing himself of the negotiated plea he was waiving his right to appeal and that he had discussed this waiver with counsel (*Id.*, p. 8, lines 3-25 and p. 9, line 1). The Court also informed Defendant of the potential immigration consequences of his plea of guilty in the event he is not a citizen of the United States (*Id.*, p. 9, lines 8-25 and p.10, line 1).

Subsequent to the above described plea colloquy, Defendant admitted, under oath, that at approximately 11:30 am on January 9, 2019 he attempted to enter a dwelling located at 577 Forest Avenue in the City of New Rochelle, County of Westchester and State of New York (*Id.*, p, 10, lines 5-20). Prior to accepting Defendant's guilty plea, the Court specifically inquired of Defendant whether he understood the proceedings and if he had any questions for the Court or counsel (*Id.*, p.10, lines 21-25 and p. 11, lines 1-6). Defendant indicated his understanding, denied having any questions and responded in the affirmative to the Court's pointed inquiry as to whether he wanted the Court to accept his plea (*Id.*, p. 11, lines 1-8). Only then did the Court accept Defendant's plea of guilty as having been made and given knowingly and voluntarily (*Id.*, p. 11, lines 9-11). The Court set a sentencing date of December 5, 2019 (*Id.*, p. 11, line 11).

Sentencing did not proceed as anticipated as Defendant indicated his desire to withdraw his previously entered plea of guilty. Upon this representation, this Court relieved attorney Mattesi and appointed present counsel to assist Defendant in pursuing this application (see, Duffy Affirmation, ¶¶ 5-6). Through the within counseled motion, filed on March 12, 2020, Defendant alleges innocence, contends he "lack[s] the necessary mental capacity to understand the plea allocution and its consequences" as he suffers from "substantial mental health issues" and, additionally, alleges he "only entered into the plea agreement because he was fearful of receiving a 3½ year sentence of incarceration" (Duffy Affirmation ¶¶ 9-22).

By Affirmation in Opposition and Memorandum of Law, filed March 17, 2020, the People oppose Defendant's application in its entirety.

#### Findings of Law

A guilty plea is intended to signify the end of a criminal case and is 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 procedural vehicle by which a defendant may seek to withdraw a previously entered plea of guilty, it is well settled that such a motion is to be granted sparingly and only in cases where there is evidence of innocence or where fraud or mistake played a role in inducing the plea (*People v. Smith*, 54 AD3d 879 [2d Dept. 2008]; and see, *People v. Pillich*, 48 AD3d 1061 [2008]). The determination as to whether a particular defendant should be permitted to withdraw a previously entered plea of guilty rests squarely in the discretion of the trial court (CPL § 220.60[3]; and see, *People v. Alexander*, 97 NY2d 482 [2002]; *People v. Elmendorf*, 45 AD3d 858, 859 [2d Dept. 2007]).

As a general rule, a plea of guilty which has been knowingly, voluntarily and intelligently entered should be upheld (see, *Elmendorf*, 45 AD3d at 859; and see, *Fiumefreddo*, 82 NY2d 536 [1993]). The transcript of the herein Defendant's plea proceeding amply demonstrates his plea was entered subsequent to a comprehensive allocution during which, under oath, he repeatedly asserted his understanding of the rights he was relinquishing and the consequences of his plea of guilty (see generally, Plea Minutes, pp. 1-11). During the plea *voir dire*, Defendant explicitly acknowledged he was afforded sufficient time to speak to his attorney, was satisfied with his former counsel's representation and believed he had achieved a good result for him (*Id.*, p. 4, lines 8-18, and p. 7, lines 4-14). Defendant also repeatedly assured the Court he understood the proceeding and that his plea was being entered freely and voluntarily based upon his guilt (*Id.*, p. 6, lines 8-12, p. 10, lines 21-25 and p. 11, lines 1-6).

It is well settled under the law that a defendant who has entered a plea of guilty voluntarily and with the advice of counsel is not entitled to withdraw such plea based upon a subsequent unsupported claim of innocence (*People v. Dixon*, 29 NY2d 55, 57 [1971]). The within Defendant's claim of innocence is wholly conclusory and factually bereft. Of note, Defendant has not provided a supporting affidavit attesting to factual matters relating to his purported innocence or provided any other proof of same. Consequently, his belated claim of innocence neither warrants the return of his plea, a hearing or any further exploration by this Court (see, *People v. Brundage*, 83 AD2d 579 [2d Dept. 1981]). Notably, according to the People, Defendant's present claim of innocence stands in direct contravention of the evidence of his guilt which includes his having been observed by the homeowner during the commission of the crime, subsequently identified by this individual and having been arrested in temporal proximity to the completion of the crime and found to be in possession of items rightfully belonging to the homeowner (see, Memorandum of Law, p. 10).

In contrast to claims raised in the present motion, Defendant is not entitled to the return of his previously entered plea of guilty on grounds that he has long-standing mental health issues (see, Duffy Affirmation, ¶¶ 11-18). A defendant is presumed competent (see, *People v Gelikkaya*, 84 NY2d 456, 459 [1994]). This presumption cannot be rebutted by a mere showing that a defendant has a history of mental illness

(see, *People v. Hansen*, 269 AD2d 467 [2d Dept. 2000], citing *People v. Dover*, 227 AD2d 804, 805 [3d Dept. 1996]). Importantly, the record of the plea proceeding soundly demonstrates that, regardless of his history of mental illness, throughout the plea allocution Defendant was fully engaged and provided cogent responses to inquiries (see generally, Plea Minutes, pp. 1-11). Significantly, the clinician who authored the "Mitigation Memorandum" in support of the instant motion concluded Defendant "impresses as a cordial, pleasant and cooperative individual of average intelligence. While he has a long history of mental health issues, he does not present psychotic indications and his judgment and insight seem adequate" (Duffy Affirmation, Exhibit C). Accordingly, the "Mitigation Report" does not support a conclusion that, by virtue of mental illness, Defendant lacked the capacity to understand the proceedings at the time of the plea allocution (*Id.*; and see, *People v. Polimeda*, 198 AD2d 242 [2d Dept. 1993](upholding a plea of guilty in the absence of medical evidence demonstrating mental impairment where that defendant's responses during the plea allocution gave no indication of incapacity)).

Finally, Defendant asserts he was pressured into entering a plea of guilty because "he was fearful of receiving a 3 ½ year sentence of incarceration as opposed to the promised 2 ½ years" in connection with the negotiated plea deal (Duffy Affirmation, ¶ 8). In considering this claim the Court is "entitled to rely on the record to ascertain whether any promises, representations, implications and the like were made to the defendant" and the extent to which these 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]). A conveyance of facts by the court or counsel which accurately represents the legal peril and potential outcomes a defendant faces does not constitute a threat or coercion (see, *People v. Jones*, 44 NY2d 76, 81 [1978](setting aside a plea in the face of affirmative deceit and misstatements by the prosecution); *People v. Fisher*, 70 AD3d 114 [1st Dept. 2009](finding a plea coercive where the court warned defendant it was his last opportunity to enter a plea of guilty and told the defendant if he was found guilty after trial he would be sentenced to the maximum permissible penalty).

Defendant herein was provided accurate legal advice concerning the potential mandatory minimum prison sentence he could face if convicted of burglary in the second degree in comparison to the promised sentence of the negotiated plea deal (see, Penal Law §§ 60.05[4], 70.02[3](b), 70.00[6] and 70.45[2]). 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]; and see, *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 his client to plead guilty to avoid the possibility of a harsher sentence after trial or 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]; and see, *People v. Burdo*, 1 AD3d 793, 794 [3d Dept. 2003]). Moreover, the fact that a defendant is scared or confused at the time he enters a plea of guilty presents an sufficient basis to warrant return a previously entered plea of guilty that, otherwise, was given knowingly, voluntarily and intelligently (*People v. Corwise*, 120 AD2d 604 [1986]).

The record of the plea proceeding in the instant case conclusively demonstrates Defendant entered his plea of guilty knowingly and voluntarily after a searching inquiry which established his understanding of the proceedings and every right he was forfeiting by entering a plea of guilty. While under oath Defendant expressed satisfaction with counsel and categorically denied his plea was the result of force. Defendant's belated claim of innocence is conclusory and self-serving. Further, no evidence has been brought forth to establish Defendant's mental health diagnosis impacted his capacity to enter a knowing and voluntary plea. Consequently, it is an appropriate exercise of this Court's discretion to summarily deny Defendant's motion to withdraw his previously entered plea of guilty (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  
May 27, 2020



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Honorable Barry E. Warhit  
Supreme Court Judge

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