

People v Holifield

2020 NY Slip Op 35589(U)

November 2, 2020

County Court, Onondaga County

Docket Number: Indictment No. 02-0700-1

Judge: Matthew J. Doran

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
COUNTY OF ONONDAGA

COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

vs.

Indictment Number: 02-0700-1

Index Number: 02-0682

HENRY HOLIFIELD,

Defendant.

APPEARANCES: WILLIAM J. FITZPATRICK, ESQ.,
District Attorney of Onondaga County
BRADLEY W. OASTLER, ESQ.
Attorney for the People

HENRY HOLIFIELD
Pro Se



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DORAN, MATTHEW J., Presiding

CO-2002-000682

DECISION / ORDER

This is a pro se motion pursuant to Criminal Procedure Law Section 440.10 wherein the Defendant has requested that the Court vacate the instant underlying judgment of conviction upon the grounds that (1) he was denied effective assistance of counsel for his counsel's failure to subpoena witnesses whose testimony would have changed the trial outcome; (2) he was denied effective assistance of counsel for his counsel's failure to pursue a "third party culpability defense" and (3) that the prosecutor engaged in misconduct in hiding evidence that the murder weapon was owned by the co-defendant's grandfather.

A review of the facts of this case indicates that an Indictment was filed against the Defendant charging him with **Murder in the First Degree** in violation of Penal Law Section 125.27(1)(a)(vii) and (b), **Murder in the Second Degree** in violation of Penal Law Section 125.25(3), 2 counts of **Robbery in the First Degree**

in violation of Penal Law Section 160.15, 2 counts of **Grand Larceny in the Fourth Degree** in violation of Penal Law Section 155.30 and **Criminal Possession of a Weapon in the Second Degree** in violation of Penal Law Section 265.03(2) involving an incident occurring on April 23rd, 2002, wherein the victim, Jonathan Perry, was killed by a gunshot to the back of his head at close range. It was alleged that the Defendant and the co-defendant lured the victim into the basement of his home where he was shot by this defendant after which the Defendant took money and credit cards from the deceased victim's pocket. The Defendant and the co-defendant were then arrested after the police traced them to using the victim's credit cards on the day of the murder.

A jury trial was commenced on May 5th, 2003 and the Defendant was found guilty of **Murder in the First Degree** and all submitted counts. On June 16th, 2003, the Court sentenced the defendant to an aggregate of life imprisonment without parole.

The Defendant subsequently appealed his conviction alleging, among other things, that his conviction was against the weight of the evidence. On March 17th, 2006, the Appellate Division, Fourth Department, unanimously affirmed the conviction, stating that they could not conclude that the jury failed to give the evidence the weight it should be accorded (see *People v Holifield*, 27 AD3d 1163[4th Dept 2006]). The Court of Appeals denied leave to Appeal (*People v Holifield*, 6 NY3d 848[2006]).

As indicated by the People in their reply papers, the Defendant also sought a writ of habeas corpus and the United States District Court for the Northern District of New York denied the Defendant's claim and noted that evidence sufficient

to uphold the conviction was "clearly established by the record in this case" *Holifield v Supt Southport Corr Facility*, 2009 WL 160815 [ND NY 2009].

It appears that the Defendant also moved for a writ of error coram nobis, claiming that he was denied effective assistance of appellate counsel. Defendant's motion was denied (*People v Holifield*, 66 AD3D 1498 [4th Dept 2009]) and leave to appeal was denied by the Court of Appeals (*People v Holifield*, 15 NY3d 751 [2010]).

The Defendant now brings the instant motion pursuant to CPL Section 440.10.

The Court has reviewed the briefs submitted on behalf of both parties and is of the opinion that the Defendant's allegations are both legally and factually insufficient to support a finding by the Court that the Defendant's conviction should be vacated and therefore, the Defendant's motion must be denied.

First and foremost, the Court would note that a dismissal of the Defendant's motion at the onset is warranted as it is wholly unsupported by any evidence or affidavits. Pursuant to New York Criminal Procedure Law §440.30(4)(d), a Court may deny a motion to vacate a judgment of conviction when an allegation essential to support such motion is "made solely by the defendant and is unsupported by any other affidavit or evidence and under these and all other circumstances attending the case there is no reasonable possibility that such allegation is true." A trial court does not abuse its discretion in denying a motion to vacate a judgment when the defendant's motion papers did not include any evidence of contradictory testimony or evidence to establish that the prosecution was aware of false testimony (*People v Brown*, 56 NY2d 242, 246-47). Given that the defendant's papers do not contain any sworn allegations, such motion is defective (see CPL 440.30(4)(b)).

Additionally, to the extent that the defendant's current claims regarding the ineffective assistance of counsel, which include the allegation that his counsel failed to subpoena witnesses whose testimony would have changed the trial outcome and that counsel failed to pursue a "third party culpability defense", were not raised on appeal, the Court is of the opinion that sufficient facts appeared upon the record to have permitted, upon appeal, adequate review of such claims issues but, due to the defendant's unjustifiable failure, they were not (see Criminal Procedure Law Section 440.10(2)(c)).

In any event, upon a thorough review of the entire record of this case, the Court is of the opinion that the Defendant's contentions do not support a meritorious claim of ineffective assistance of counsel.

There is no precise definition of what constitutes ineffective legal representation, nor is there a particular standard applicable to every case. Rather, all of the evidence must be weighed in the context at the time of the representation to assess the alleged deficient representation. It appears from the record in this case that this Defendant received meaningful representation.

In *People v Baldi*, 54 NY2d 137, the Court of Appeals has adopted a flexible approach to the determination of issues relating to the ineffective assistance of counsel which determination is depended upon the circumstances of each case.

The court in *Baldi*, 54 NY2d at 146, 147 stated:

"...so long as the evidence, the law and the circumstances of a particular case, viewed in totality, and at the time of the representation, reveal that the attorney provided meaningful representation, the constitutional requirement will have been met..." (see also *People v Benevento*, 91 NY2d 708; *People v Flores*, 84 NY2d 184; *People v Rivera*, 71 NY2d 705; *People v Benn*, 68 NY2d 941).

The evidence, the law and the circumstances alleged upon the instant motion, viewed in totality and at the time of the representation, reveal to this Court that the Defendant's attorney provided meaningful representation (see *People v Baldi*, 54 NY2d 137; *People v Benevento*, 91 NY2d 708; *People v Flores*, 84 NY2d 184; *People v Rivera*, 71 NY2d 705; *People v Benn*, 68 NY2d 941).

In *People v Cortez*, 296 AD2d 465 the Court stated:

"A defendant is not guaranteed a perfect trial but is entitled to a fair one. Thus, to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that he or she was deprived of a fair trial by less than meaningful representation; mere disagreement with strategies or tactics will not suffice" (see, *People v Benn*, 68 NY2d 941, 942; *People v Satterfield*, 66 NY2d 796, 798-799).

Upon a review of the facts and circumstances of this case, the Court is of the opinion that there is nothing in the record to cast doubt upon the apparent effectiveness of his counsel. Clearly, the defense attorney vigorously pursued appropriate motions and objections before and during trial which exhibited a thorough grasp of the factual issues and knowledge of the applicable law.

Additionally, the Court agrees with the People's contention that the Defendant's allegations that counsel was ineffective for failing to call witnesses and/or pursue a defense of third party culpability is not probative as to whether the Defendant was the actual shooter. The evidence adduced at trial was consistent with and supported the Defendant's confession including the details of the shooting and the victim's body. There is no reasonable likelihood that evidence of either the co-defendant's ties to the murder weapon before and after the murder also supports the contention that she was the shooter.

Furthermore, the Court is of the opinion that the Defendant has not made the required showing that there was no strategic or other legitimate explanation

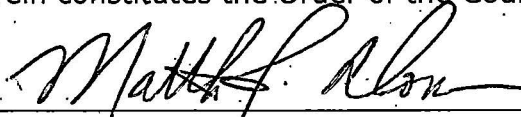
for counsel's failure to call a particular witness or pursue a particular defense (see *People v Chen*, 293 AD2d 362; *People v Chung*, 276 AD2d 708; *People v Williams*, 273 AD2d 824). The defendant's mere disagreement with the strategies and tactics of defense counsel "does not suffice to satisfy defendant's burden of establishing ineffective assistance of counsel" (see *People v Benn*, 68 NY2d 941, 942; *People v Satterfield*, 66 NY2d 796, 798-799; see also, *People v Brandon*, 237 AD2d 980).

Therefore, the Court finds Defendant's claims of ineffective assistance of counsel is without support and, indeed, is contradicted by the record. There is nothing in the record that casts doubt on the apparent effectiveness of counsel as meaningful representation has been provided.

Lastly, the Defendant's claim of prosecutorial misconduct is unsupported by any evidence and has no factual basis, either in the trial court record or in the Defendant's affidavit supporting his present Criminal Procedure Law §440.10 motion. The Defendant has not alleged any new facts, and the Defendant has thereby inappropriately used a Criminal Procedure Law §440.10 motion as a secondary vehicle of appeal to raise a claim of prosecutorial misconduct. Thus, the Defendant's motion must be denied as a result.

Based upon the foregoing, the Defendant's Motion to Vacate is **denied** in all respects without a hearing.

The Decision herein constitutes the Order of the Court.



MATTHEW J. DORAN
Judge of County Court

Dated: Syracuse, New York
November 2nd, 2020

MJD/bab

NOTICE AS TO FURTHER APPEAL

Please be advised that pursuant Criminal Procedure Law Section 460.15, a defendant has the right to apply for a certificate granting leave to appeal to an intermediate appellate court. An application for such a certificate must be made in the manner set forth in the rules of the appellate division of this department (see 22 NYCRR Section 1000.13(o)).

Denial of the application for permission to appeal by the judge or justice first applied to is final and no new application may thereafter be made to any other judge or justice.

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