

NEW YORK COURT OF APPEALS

The People v. Ronald D. Rossborough

27 N.Y.3d 485 (2016) · No. No. 69 · Decided June 2, 2016

SUMMARY

The New York Court of Appeals held that a felony defendant may expressly waive the right to be personally present at sentencing. The waiver must be knowing, voluntary, and intelligent, and the court must ensure that the defendant understands the right being waived. Because Ronald D. Rossborough knowingly waived his presence and was sentenced according to the negotiated plea agreement, the court affirmed.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Judge Pigott; Chief Judge DiFiore; Judge Rivera; Judge Abdus-Salaam; Judge Stein; Judge Garcia; Judge Fahey
JURISDICTION	New York
DECIDED	June 2, 2016
DOCKET	No. 69
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed, by leave of a Judge of the New York Court of Appeals, from an Appellate Division order rejecting his challenge to being sentenced in absentia after pleading guilty to a felony.
PRECEDENTIAL VALUE	precedential
PARTIES	Ronald D. Rossborough v. The People

TOPICS

- criminal procedure
- sentencing
- plea bargaining
- statutory interpretation
- appellate procedure

PRACTICE AREAS

- Criminal procedure
- Sentencing
- Plea bargaining
- Statutory interpretation
- Appellate procedure

QUESTIONS PRESENTED

1. Whether a defendant who has pleaded guilty to a felony may expressly waive the statutory right to be personally present when sentence is pronounced under Criminal Procedure Law § 380.40.
2. Whether defendant's on-the-record waiver was knowing, voluntary, and intelligent under the circumstances of the negotiated plea and sentencing.

HOLDINGS

1. A defendant convicted of a felony may expressly waive the right to be personally present at sentencing, notwithstanding Criminal Procedure Law § 380.40's general requirement of personal presence.
2. Defendant validly waived his right to be personally present because he specifically requested the waiver, made the request on the record in the presence of counsel, was advised of his absolute right to appear, understood the plea terms, and was assured that he would have to appear if the negotiated sentence could not be imposed.

KEY QUOTATIONS

“We conclude, however, that a defendant may expressly waive his right to be present.” (at 5)

“A defendant's right to be present at sentencing does not fall within the class of those fundamental rights that may not be waived, particularly where a defendant is receiving the sentence to which he knowingly and voluntarily agreed in a plea bargain.” (at 5)

“Under these circumstances, defendant, having expressly waived his right to personally appear in the presence of his counsel, cannot be heard to complain that County Court erred in granting his specific request.” (at 6)

FACTUAL BACKGROUND

Defendant pleaded guilty to grand larceny in the third degree, a class D felony, in exchange for a three-to-six-year indeterminate sentence to run concurrently with sentences from other counties. Before sentencing, defense counsel informed the court that defendant wished to waive his personal appearance. The court advised defendant on the record that he had an absolute right to be present, confirmed that he understood the plea agreement and the consequences of the waiver, and reserved the requirement that he appear if the court could not honor the agreement. Counsel appeared at sentencing, confirmed that the presentence report was satisfactory, and the court imposed the agreed sentence.

PROCEDURAL HISTORY

Defendant pleaded guilty in Wyoming County Court to grand larceny in the third degree in full satisfaction of the indictment, subject to a negotiated sentence. After expressly waiving his personal appearance at sentencing, defendant was sentenced in accordance with the plea agreement while represented by counsel. The Appellate Division, Fourth Department, affirmed, holding that defendant had waived his right to be present. The Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Corley, 67 N.Y.2d 105, 109-110 (1986)
- People v. Sanchez [Rivera], 65 N.Y.2d 436, 444 (1985)
- People v. Stroman, 36 N.Y.2d 939 (1975)
- People v. Mox, 20 N.Y.3d 936, 938 (2012)
- People v. Henriquez, 3 N.Y.3d 210, 216 (2004)
- People v. Smith, 92 N.Y.2d 516, 520 (1998)
- People v. Epps, 37 N.Y.2d 343 (1975), cert. denied, 423 U.S. 999 (1975)
- People v. Condon, 10 A.D.3d 811, 812-813 (3d Dep't 2004), leave denied, 4 N.Y.3d 742 (2004)

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