

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

People v. Aimetti

2021 NY Slip Op 03465 (App. Div. 2021) · No. 2019-07605 · Decided June 2, 2021

SUMMARY

The Appellate Division, Second Department, affirmed Robert Aimetti’s judgment of conviction for assault, menacing, harassment, and criminal contempt offenses. The court held that the legal-sufficiency challenge was unpreserved, found the evidence legally sufficient and not against the weight of the evidence, and declined to review the mixed ineffective-assistance claim on direct appeal because it involved matters outside the record.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Cheryl E. Chambers, J.; Leonard B. Austin, J.; Colleen D. Duffy, J.
JURISDICTION	New York
DECIDED	June 2, 2021
DOCKET	2019-07605
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from a judgment of the Supreme Court, Kings County, entered after a jury verdict convicting the defendant of assault in the third degree, two counts of menacing in the third degree, harassment in the second degree, and four counts of criminal contempt in the second degree.
STANDARD OF REVIEW	A legal-sufficiency claim is reviewed by viewing the evidence in the light most favorable to the prosecution and determining whether it establishes guilt beyond a reasonable doubt. The appellate court independently reviews the weight of the evidence. Unpreserved legal-sufficiency claims are not reviewable absent an exception to the preservation requirement.
PRECEDENTIAL VALUE	Published intermediate appellate decision

PARTIES

Robert Aimetti v. The People of the State of New York

TOPICS

criminal procedure

appellate procedure

ineffective assistance

post-conviction relief

standard of review

PRACTICE AREAS

criminal procedure

appellate practice

post-conviction relief

QUESTIONS PRESENTED

1. Whether the defendant preserved his challenge to the legal sufficiency of the evidence and, if not, whether the evidence was nevertheless legally sufficient.
2. Whether the convictions were against the weight of the evidence.
3. Whether the defendant's mixed claim of ineffective assistance of counsel could be resolved on the record on direct appeal or instead required a CPL 440.10 proceeding.
4. Whether the defendant's remaining appellate contention had merit.

HOLDINGS

1. The defendant failed to preserve his challenge to the legal sufficiency of the evidence for appellate review. In any event, the evidence was legally sufficient to establish his guilt beyond a reasonable doubt when viewed in the light most favorable to the prosecution.
2. The convictions were not against the weight of the evidence.
3. When an ineffective-assistance claim is based partly on matters appearing on the record and partly on matters outside the record, and cannot be resolved without reference to matters outside the record, a CPL 440.10 proceeding is the appropriate forum for reviewing the claim in its entirety; the appellate court may decline to review it on direct appeal.
4. The defendant's remaining contention was without merit.

FACTUAL BACKGROUND

A jury found Robert Aimetti guilty of assault in the third degree, two counts of menacing in the third degree, harassment in the second degree, and four counts of criminal contempt in the second degree. The trial court entered judgment and imposed sentence on June 3, 2019. The Appellate Division determined that the evidence was legally sufficient when viewed favorably to the prosecution and that the verdict was not against the weight of the evidence.

PROCEDURAL HISTORY

The Supreme Court, Kings County, rendered judgment on June 3, 2019, after a jury convicted Aimetti of the charged offenses and the court imposed sentence. Aimetti appealed, challenging the legal sufficiency and weight of the evidence and asserting ineffective assistance of counsel. The Appellate Division affirmed, declining to

review the mixed ineffective-assistance claim on direct appeal because it depended partly on matters outside the record.

DISPOSITION

affirmed

CASES CITED

- People v. Hawkins, 11 NY3d 484, 492
- People v. Contes, 60 NY2d 620, 621
- People v. Danielson, 9 NY3d 342, 348-349
- People v. Romero, 7 NY3d 633
- People v. Maxwell, 89 AD3d 1108, 1109
- People v. Evans, 16 NY3d 571, 575 n 2
- People v. Maffei, 35 NY3d 264, 269-270
- People v. Martinez-Galdamez, ___ AD3d ___, 2021 NY Slip Op 02178 [2d Dept]

OPINION

PER CURIAM.

People v Aimetti (2021 NY Slip Op 03465) People v Aimetti 2021 NY Slip Op 03465 Decided on June 2, 2021 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on June 2, 2021 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department MARK C. DILLON, J.P.

CHERYL E. CHAMBERS LEONARD B. AUSTIN COLLEEN D. DUFFY, JJ. 2019-07605 (Ind. No. 58598/17) [*1]The People of the State of New York, respondent, vRobert Aimetti, appellant. Robert Aimetti, Brooklyn, NY, appellant pro se. Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove, Jean M. Joyce, and Jason Eldridge of counsel), for respondent. DECISION & ORDER Appeal by the defendant from a judgment of the Supreme Court, Kings County (Matthew Sciarrino, Jr., J.), rendered June 3, 2019, convicting him of assault in the third degree, menacing in the third degree (two counts), harassment in the second degree, and criminal contempt in the second degree (four counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed. The defendant failed to preserve for appellate review his challenge to the legal sufficiency of the evidence supporting his convictions (see CPL 470.05[2]; People v Hawkins, 11 NY3d 484, 492).

In any event, viewing the evidence in the light most favorable to the prosecution (see People v Contes, 60 NY2d 620, 621), we find that it was legally sufficient to establish the defendant's guilt

beyond a reasonable doubt.

Moreover, in fulfilling our responsibility to conduct an independent review of the weight of the evidence (see CPL 470.15[5]; *People v Danielson*, 9 NY3d 342, 348-349), we are satisfied that the verdict of guilt was not against the weight of the evidence (see *People v Romero*, 7 NY3d 633).

The defendant's claim of ineffective assistance of counsel is based, in part, on matter appearing on the record and, in part, on matter outside the record, and thus, constitutes a "mixed claim of ineffective assistance" (*People v Maxwell*, 89 AD3d 1108, 1109; see *People v Evans*, 16 NY3d 571, 575 n 2). Since the defendant's claim of ineffective assistance of counsel cannot be resolved without reference to matter outside the record, a CPL 440.10 proceeding is the appropriate forum for reviewing the claim in its entirety, and we decline to review the claim on this direct appeal (see *People v Maffei*, 35 NY3d 264, 269-270; *People v Martinez-Galdamez*, ___ AD3d ___, 2021 NY Slip Op 02178 [2d Dept]; *People v Maxwell*, 89 AD3d at 1109).

The defendant's remaining contention is without merit. DILLON, J.P., CHAMBERS, AUSTIN and DUFFY, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court