

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
THIRD DEPARTMENT

People v. Minaya

2022 NY Slip Op 03769 (N.Y. Ct. App. 2022) · No. 111498; 112645 · Decided June 9, 2022

SUMMARY

The Appellate Division, Third Department affirmed the judgment convicting Saury Minaya, upon a guilty plea, of rape in the second degree, as well as orders denying his CPL 440.10 motion to vacate the conviction. The court rejected or found unpreserved challenges concerning the waiver of indictment, the validity of the plea, sentencing, a subpoena for the victim's statements, and ineffective assistance of counsel. The court held that defendant received meaningful representation and that the sentence was not unduly harsh or severe.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Fisher, J.; Egan Jr., J.P.; Colangelo, J.; Ceresia, J.
JURISDICTION	New York
DECIDED	June 9, 2022
DOCKET	111498; 112645
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of conviction entered after his guilty plea and, by permission, from orders denying his CPL article 440.10 motion to vacate the judgment without a hearing.
STANDARD OF REVIEW	The court reviewed whether the waiver of indictment was jurisdictionally defective, whether the guilty plea was valid, whether the sentence was unduly harsh or severe, whether County Court properly denied the CPL 440.10 motion without a hearing, and whether denial of the subpoena request was proper. Sentencing was reviewed for reduction in the interest of justice under CPL 470.15(6) (b); the ineffective-assistance claim was reviewed in the context of the CPL 440.10 motion.
PRECEDENTIAL VALUE	Published opinion; precedential New York Appellate Division decision

PARTIES

Saury Minaya v. The People of the State of New York

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QUESTIONS PRESENTED

1. Whether omission of the time and date of the offense from the waiver of indictment rendered the waiver jurisdictionally defective despite defendant's guilty plea.
2. Whether defendant's guilty plea to second-degree rape based on mental incapacitation was invalid because that offense was allegedly not a lesser included offense of the charged first-degree rape offense.
3. Whether defendant's sentence was unduly harsh or severe.
4. Whether County Court properly denied defendant's request for a judicial subpoena for the victim's statements.
5. Whether defendant received effective assistance of counsel and whether County Court properly denied his CPL 440.10 motion without a hearing.

HOLDINGS

1. The omission of nonelemental information, including the time and date of the offense, did not render the waiver of indictment jurisdictionally defective. Because defendant did not object and pleaded guilty, any such challenge was forfeited.
2. Defendant's challenge to the validity of his plea on the ground that second-degree rape was not a lesser included offense of the charged first-degree rape was unpreserved. In any event, the plea was valid because a negotiated plea is not invalid merely because the offense pleaded to is inconsistent with the crime charged or is not a lesser included offense.
3. The sentence of five years' imprisonment followed by seven years of postrelease supervision was not unduly harsh or severe and did not warrant reduction in the interest of justice.
4. County Court properly denied the request for a judicial subpoena. The argument that the victim's prior statements would have constituted Brady material was not preserved because it was not raised below, and a judicial subpoena may not be used to circumvent the Criminal Procedure Law's discovery rules.
5. Defendant received meaningful representation, and County Court did not abuse its discretion by denying the motion to withdraw the plea and the CPL 440.10 motion without a hearing.

KEY QUOTATIONS

“In the context of a guilty plea, a defendant has been afforded meaningful representation when he or she receives an advantageous plea and nothing in the record casts doubt upon the apparent effectiveness of counsel” ([*3])

“that process may not be used to circumvent discovery rules pursuant to the Criminal Procedure Law” ([*2])

FACTUAL BACKGROUND

Defendant was initially charged with first-degree rape by forcible compulsion, a class B violent felony punishable by five to twenty-five years' imprisonment. He waived indictment and pleaded guilty to second-degree rape based on the victim's mental incapacitation, a class D violent felony carrying a two-to-seven-year sentencing range, and received five years' imprisonment plus seven years of postrelease supervision. After sentencing, he challenged the plea and conviction based on the waiver of indictment, the alleged inconsistency between the plea and the charged offense, counsel's effectiveness, the victim impact statement, and the denial of access to the victim's statements.

PROCEDURAL HISTORY

Defendant was charged by felony complaint with first-degree rape, waived indictment, consented to prosecution by superior court information, and pleaded guilty to second-degree rape. County Court denied his pre-sentencing motion to withdraw the plea, sentenced him to five years' imprisonment followed by seven years of postrelease supervision, and later denied his CPL 440.10 motion and request for a judicial subpoena in two orders. The Appellate Division affirmed the judgment and both orders.

DISPOSITION

affirmed

CASES CITED

- People v. Lang, 34 NY3d 545, 568-569 [2019]
- People v. Feltz, 190 AD3d 1026, 1026 [2021]
- People v. Moses, 184 AD3d 910, 911 [2020], lv denied 35 NY3d 1096 [2020]
- People v. Phillip, 200 AD3d 1108, 1108 [2021]
- People v. Williams, 189 AD3d 1978, 1980 [2020], lv denied 37 NY3d 1165 [2022]
- People v. Johnson, 23 NY3d 973, 974-975 [2014]
- People v. Ford, 62 NY2d 275, 283 [1984]
- People v. Johnson, 217 AD2d 133, 136-137 [1995], affd 89 NY2d 905 [1996]
- People v. Stanley, 189 AD3d 1818, 1819 [2020]
- People v. Bastian, 83 AD3d 1468, 1470 [2011], lv denied 17 NY3d 813 [2011]
- People v. Nusbaum, 222 AD2d 723, 724 [1995], lv denied 87 NY2d 1023 [1996]
- Matter of Terry D., 81 NY2d 1042, 1044 [1993]
- People v. Gissendanner, 48 NY2d 543, 551 [1979]

- People v. White-Span, 182 AD3d 909, 914 [2020], lv denied 35 NY3d 1071 [2020]
- People v. Johnson, 201 AD3d 1208, 1208 [2022]
- People v. Buchanan, 202 AD3d 1166, 1167 [2022], lv denied ___ NY3d ___ [Apr. 19, 2022]
- People v. Hewitt, 201 AD3d 1041, 1045 [2022], lv denied 38 NY2d 928 [2022]
- People v. Simpson, 196 AD3d 996, 998 [2021], lv denied 37 NY3d 1029 [2021]
- People v. Johnson, 194 AD3d 1267, 1269 [2021]

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