

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

People v. Bautista

2023 NY Slip Op 05617 (N.Y. Ct. App. 2023) · No. 2022-05717; 2022-05719 · Decided November 8, 2023

SUMMARY

The Appellate Division, Second Department affirmed two judgments convicting Fernando Bautista, upon guilty pleas, of fourth-degree grand larceny and third-degree burglary. The court held that his claim that poor pretrial confinement conditions coerced his pleas was unpreserved and unsupported by the record, and declined to review his 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	Angela G. Iannacci, J.P.; Cheryl E. Chambers, J.; Helen Voutsinas, J.; Lourdes M. Ventura, J.
JURISDICTION	New York
DECIDED	November 8, 2023
DOCKET	2022-05717; 2022-05719
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from two judgments of the County Court, Westchester County, entered after his guilty pleas to grand larceny in the fourth degree and burglary in the third degree.
STANDARD OF REVIEW	Preservation and review of claims apparent on the record in a direct criminal appeal; mixed ineffective-assistance claims requiring matters outside the record are generally left for a CPL 440.10 proceeding.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Fernando Bautista v. The People of the State of New York

TOPICS

- plea bargaining
- ineffective assistance
- preservation of error
- post-conviction relief
- appellate procedure

PRACTICE AREAS

criminal procedure

post-conviction relief

appellate procedure

plea bargaining

ineffective assistance

QUESTIONS PRESENTED

1. Whether Bautista's guilty pleas were effectively coerced by the poor conditions of his pretrial confinement.
2. Whether the Appellate Division could review Bautista's mixed claim of ineffective assistance of counsel on direct appeal when part of the claim depended on matters outside the record.

HOLDINGS

1. The coercion claim was unpreserved because Bautista did not move to withdraw his pleas or otherwise raise the issue in County Court; in any event, the record did not establish that the conditions of confinement affected or influenced his decision to plead guilty.
2. Because Bautista's ineffective-assistance claim depended partly on matters outside the appellate record, the claim could not be resolved on direct appeal and should instead be raised in a CPL 440.10 proceeding.

KEY QUOTATIONS

“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 these direct appeals”

“Nothing on the record evinces that the defendant's decision thereafter to accept the plea offer was affected or influenced by the circumstances of his pretrial confinement”

FACTUAL BACKGROUND

Bautista pleaded guilty to grand larceny in the fourth degree and burglary in the third degree. During the plea proceedings, he commented on poor conditions of his pretrial confinement as one of several challenges he faced, and the County Court granted his request for an adjournment to consider the plea offer. He later accepted the offer and confirmed during the plea allocution that his guilty pleas were voluntary. His ineffective-assistance claim relied partly on matters outside the appellate record.

PROCEDURAL HISTORY

The County Court, Westchester County, convicted Bautista upon his pleas of guilty under two Superior Court Informations and imposed sentences on April 26, 2022. Bautista appealed, arguing that his pleas were coerced by poor pretrial-confinement conditions and that he received ineffective assistance of counsel. The Appellate Division affirmed both judgments, holding that the coercion claim was unpreserved and meritless on the record, and 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 Lopez, 71 NY2d 662, 665
- People v Morales, 202 AD3d 997
- People v Harrington, 165 AD3d 1342, 1343
- People v Oden, 150 AD3d 1269, 1270
- People v Jones, 217 AD3d 884
- People v Maxwell, 89 AD3d 1108, 1109
- People v Freeman, 93 AD3d 805, 806

OPINION

PER CURIAM.

People v Bautista (2023 NY Slip Op 05617) People v Bautista 2023 NY Slip Op 05617 Decided on November 8, 2023 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 November 8, 2023 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department ANGELA G. IANNACCI, J.P.

CHERYL E. CHAMBERS HELEN VOUTSINAS LOURDES M. VENTURA, JJ. 2022-05717 2022-05719 [*1]The People of the State of New York, respondent, vFernando Bautista, appellant. (S.C.I. Nos. 274/21, 733/21) Marianne Karas, Thornwood, NY, for appellant. Miriam E. Rocah, District Attorney, White Plains, NY (Brian R. Pouliot and Raffaelina Gianfrancesco of counsel), for respondent.

DECISION & ORDER Appeals by the defendant from two judgments of the County Court, Westchester County (Alexandra D. Murphy, J.), both rendered April 26, 2022, convicting him of grand larceny in the fourth degree under Superior Court Information No. 274/21 and burglary in the third degree under Superior Court Information No. 733/21, upon his pleas of guilty, and imposing sentences.

ORDERED that the judgments are affirmed. The defendant's contention that his pleas of guilty were effectively coerced by the poor conditions of his pretrial confinement is unpreserved for appellate review, as he did not move to withdraw his pleas or otherwise raise this issue in the County Court (see People v Lopez, 71 NY2d 662, 665; People v Morales, 202 AD3d 997).

In any event, his contention is not supported by the record before this Court. While the defendant made comments on the record regarding the poor conditions of his pretrial confinement, these

statements were made as part of a list of challenges he faced.

The defendant concluded this list with a request for an adjournment to think about the plea offer, to which the County Court agreed. Nothing on the record evinces that the defendant's decision thereafter to accept the plea offer was affected or influenced by the circumstances of his pretrial confinement (see *People v Harrington*, 165 AD3d 1342, 1343). Further, the defendant confirmed during the plea allocution that he was pleading guilty voluntarily (see *People v Oden*, 150 AD3d 1269, 1270).

Accordingly, there is no basis in the record before us to disturb the judgments of conviction (see *People v Jones*, 217 AD3d 884; *People v Harrington*, 165 AD3d at 1343). 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).

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 these direct appeals (see *People v Freeman*, 93 AD3d 805, 806; *People v Maxwell*, 89 AD3d at 1109). IANNACCI, J.P., CHAMBERS, VOUTSINAS and VENTURA, JJ., concur.

ENTER: Darrell M. Joseph Acting Clerk of the Court