

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

People v. Jeffords

2020 NY Slip Op 04037 (N.Y. Ct. App. 2020) · No. 566 KA 18-01261 · Decided July 17, 2020

SUMMARY

The New York Supreme Court, Appellate Division, Fourth Department held that the defendant’s waiver of the right to appeal was invalid because the trial court mischaracterized the waiver as an absolute bar to appellate review. The court also held that the defendant abandoned his request for substitute counsel and reduced his sentence for first-degree manslaughter from 24 years to 19 years and five years of postrelease supervision as unduly harsh and severe.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Whalen, P.J.; Centra, J.; Nemoyer, J.; Curran, J.; Winslow, J.
JURISDICTION	New York
DECIDED	July 17, 2020
DOCKET	566 KA 18-01261
DISPOSITION	other
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Erie County Court convicting him upon his guilty plea of manslaughter in the first degree.
STANDARD OF REVIEW	The court reviewed the validity of the appeal waiver and the claimed failure to inquire into substitute counsel under applicable appellate legal standards, and reviewed the sentence for whether it was unduly harsh and severe, exercising discretion in the interest of justice.
PRECEDENTIAL VALUE	Published appellate opinion
PARTIES	Cody Jeffords v. The People of the State of New York

TOPICS

- sentencing
- appellate procedure
- right to counsel
- criminal procedure
- plea bargaining

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether defendant validly waived his right to appeal when the court characterized the waiver as an absolute bar to any appeal and the written waiver was not shown in the record.
2. Whether defendant's request for substitute counsel required further inquiry despite his subsequent guilty plea while represented by the same attorney.
3. Whether defendant's 24-year determinate sentence was unduly harsh and severe and should be reduced in the interest of justice.

HOLDINGS

1. Defendant's waiver of the right to appeal was invalid because the County Court mischaracterized it as an absolute bar to taking an appeal.
2. The court did not need to reach whether the guilty plea foreclosed defendant's claim because, in any event, defendant abandoned his request for new counsel by pleading guilty while still represented by the same attorney.
3. The 24-year determinate sentence was unduly harsh and severe, and the court reduced it in the interest of justice to 19 years of imprisonment followed by five years of postrelease supervision.

KEY QUOTATIONS

*“defendant's waiver of the right to appeal was invalid because the court mischaracterized it as an “absolute bar” to the taking of an appeal” ([*1])*

*“defendant abandoned his request for new counsel when he decid[ed] . . . to plead guilty while still being represented by the same attorney” ([*1])*

FACTUAL BACKGROUND

Defendant pleaded guilty to manslaughter in the first degree and received a 24-year determinate sentence. During the plea colloquy, the County Court described the appeal waiver as preventing defendant from appealing the case to a higher court and as waiving any and all legal issues. Defendant also purportedly signed a written appeal waiver, but that waiver was not included in the appellate record, and the court did not inquire whether defendant understood or had read it. Defendant had requested substitute counsel but later pleaded guilty while represented by the same attorney; the record also reflected his background, remorse, and lack of prior criminal history.

PROCEDURAL HISTORY

The Erie County Court rendered judgment on February 1, 2017, after defendant pleaded guilty to manslaughter in the first degree. On appeal, defendant challenged the validity of his appeal waiver and the inquiry into his request for substitute counsel, and argued that his sentence was unduly harsh and severe. The Appellate Division modified the judgment in the interest of justice by reducing the sentence and affirmed it as modified.

DISPOSITION

other

REMAND INSTRUCTIONS

The judgment was modified as a matter of discretion in the interest of justice by reducing the sentence to a determinate term of imprisonment of 19 years and five years of postrelease supervision; as modified, the judgment was affirmed.

CASES CITED

- People v. Thomas, 34 NY3d 545, 565, 567 (2019)
- People v. Lopez, 6 NY3d 248, 256 (2006)
- People v. Johnson [appeal No. 1], 169 AD3d 1366, 1366 (4th Dept 2019), lv denied 33 NY3d 949 (2019)
- People v. Bradshaw, 18 NY3d 257, 262 (2011)
- People v. Mobayed, 158 AD3d 1221, 1222 (4th Dept 2018), lv denied 31 NY3d 1015 (2018)
- People v. Morris, 94 AD3d 1450, 1451 (4th Dept 2012), lv denied 19 NY3d 976 (2012)
- People v. Guantero, 100 AD3d 1386, 1387 (4th Dept 2012), lv denied 21 NY3d 1004 (2013)
- People v. Coleman, 178 AD3d 1377, 1378 (4th Dept 2019)
- People v. Barr, 169 AD3d 1427, 1427-1428 (4th Dept 2019), lv denied 33 NY3d 1028 (2019)

OPINION

PER CURIAM.

People v Jeffords (2020 NY Slip Op 04037) People v Jeffords 2020 NY Slip Op 04037 Decided on July 17, 2020 Appellate Division, Fourth 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 July 17, 2020 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department PRESENT: WHALEN, P.J., CENTRA, NEMOYER, CURRAN, AND WINSLOW, JJ. 566 KA 18-01261 [*1]THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, vCODY JEFFORDS, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (BARBARA J. DAVIES OF COUNSEL), FOR DEFENDANT-APPELLANT. JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (DAVID A. HERATY OF COUNSEL), FOR RESPONDENT. Appeal from a judgment of the Erie County Court (Sheila A. DiTullio, J.), rendered February 1, 2017.

The judgment convicted defendant upon his plea of guilty of manslaughter in the first degree. It is hereby ORDERED that the judgment so appealed from is unanimously modified as a matter of

discretion in the interest of justice by reducing the sentence to a determinate term of imprisonment of 19 years and five years of postrelease supervision, and as modified the judgment is affirmed.

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of manslaughter in the first degree (Penal Law § 125.20 [1]), defendant contends that he did not validly waive his right to appeal. We agree.

The better practice is for the court to use the Model Colloquy, which "neatly synthesizes... the governing principles" (People v Thomas, 34 NY3d 545, 567 [2019], citing NY Model Colloquies, Waiver of Right to Appeal, <http://www.nycourts.gov/judges/cji/8-Colloquies/Waiver%20of%20Right%20to%20Appeal.pdf>).

Here, in describing the nature of defendant's right to appeal and the breadth of the waiver of that right, County Court incorrectly stated that defendant could not "appeal this case to a higher court; it would end here at the time of sentence" and that defendant was "waiving any appellate issues... [i.e.,] any and all legal issues."

Although no "particular litany" is required for a waiver of the right to appeal to be valid (People v Lopez, 6 NY3d 248, 256 [2006]; see People v Johnson [appeal No. 1], 169 AD3d 1366, 1366 [4th Dept 2019], lv denied 33 NY3d 949 [2019]), defendant's waiver of the right to appeal was invalid because the court mischaracterized it as an "absolute bar" to the taking of an appeal (Thomas, 34 NY3d at 565).

Additionally, we are unable to determine whether the written appeal waiver purportedly signed by defendant at the plea colloquy corrected any defects in the court's oral colloquy because it was not included in the record on appeal.

In any event, "[t]he court did not inquire of defendant whether he understood the written waiver or whether he had even read the waiver before signing it" (People v Bradshaw, 18 NY3d 257, 262 [2011]; see People v Mobayed, 158 AD3d 1221, 1222 [4th Dept 2018], lv denied 31 NY3d 1015 [2018]). Defendant contends that the court did not make an appropriate inquiry into his request for a substitution of counsel.

Assuming, arguendo, that this contention is not foreclosed by his guilty plea because it "implicates the voluntariness of the plea" (People v Morris, 94 AD3d 1450, 1451 [4th Dept 2012], lv denied 19 NY3d 976 [2012]), we nevertheless conclude that "defendant abandoned his request for new counsel when he decid[ed]... to plead guilty while still being represented by the same attorney" (People v Guantero, 100 AD3d 1386, 1387 [4th Dept 2012], lv denied 21 NY3d 1004 [2013]; see People v Coleman, 178 AD3d 1377, 1378 [4th Dept 2019]; People v Barr, 169 AD3d 1427, 1427-1428 [4th Dept 2019], lv denied 33 NY3d 1028 [2019]).

We agree with defendant, however, that the 24-year determinate sentence is unduly harsh and severe considering, inter alia, defendant's background, genuine show of remorse, and lack of prior criminal history. Thus, we modify the judgment as a matter of discretion in the interest of justice by reducing the sentence to a determinate term of imprisonment of 19 years and five years of postrelease supervision, which falls within the sentence range negotiated by the parties (see CPL 470.15 [6] [b]).

Entered: July 17, 2020 Mark W. Bennett Clerk of the Court