

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

People v. Booker

Booker, 2025 NY Slip Op 07394 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2025) · No. 2024-01243 · Decided December 31, 2025

SUMMARY

The Appellate Division, Second Department, affirmed the denial without a hearing of Walter Booker's CPL 440.10 motion to vacate his convictions. The court held that his allegations concerning improper contact between a grand jury witness and a grand juror were unsupported, and that counsel's decisions regarding investigation and cross-examination constituted valid trial strategy rather than ineffective assistance.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Per Curiam; Mark C. Dillon, J.P.; Angela G. Iannacci, J.; Deborah A. Dowling, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	December 31, 2025
DOCKET	2024-01243
DISPOSITION	affirmed
PROCEDURAL POSTURE	By permission, the defendant appealed from an order of the County Court, Rockland County, denying without a hearing his CPL 440.10 motion to vacate his judgment of conviction on ineffective-assistance grounds.
STANDARD OF REVIEW	Whether the County Court improvidently exercised its discretion in denying the CPL 440.10 motion without a hearing; ineffective assistance was evaluated under New York's meaningful-representation standard.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Walter Booker v. The People of the State of New York

TOPICS

ineffective assistance

post-conviction relief

criminal procedure

grand jury

appellate procedure

PRACTICE AREAS

criminal procedure

post-conviction relief

ineffective assistance of counsel

appellate procedure

QUESTIONS PRESENTED

1. Whether the County Court properly denied Booker's CPL 440.10 motion without a hearing when the factual allegations concerning improper contact between a grand jury witness and a grand juror were based solely on his affidavit and unsupported by other evidence.
2. Whether trial counsel was ineffective for failing to investigate or litigate the alleged grand-juror contact and for declining to cross-examine the grand jury witness about that matter or the witness's employment disciplinary record.
3. Whether counsel's representation satisfied New York's meaningful-representation standard and the federal constitutional standard.

HOLDINGS

1. The County Court did not improvidently exercise its discretion in denying the CPL 440.10 motion without a hearing because Booker's allegations concerning improper contact between the grand jury witness and a grand juror were based solely on his affidavit, unsupported by other evidence, and presented no reasonable possibility of being true under the circumstances.
2. Counsel's decision not to cross-examine the grand jury witness about the alleged contact with a grand juror or the witness's employment disciplinary record appeared to be a valid trial tactic and did not establish ineffective assistance.
3. Because New York's meaningful-representation standard provides greater protection than the federal test, the court rejected Booker's federal constitutional challenge.

KEY QUOTATIONS

"CPL 440.30(4)(d) provides that the court may deny a CPL 440.10 motion without conducting a hearing if "[a]n allegation of fact essential to support the motion (i) is contradicted by a court record or other official document, or is made solely by the defendant and is unsupported by any other affidavit or evidence, and (ii) under these and all the other circumstances attending the case, there is no reasonable possibility that such allegation is true."" ([1])

"The evidence, the law, and the circumstances of this particular case, viewed in totality and as of the time of the representation, reveal that defense counsel provided meaningful representation" ([2])

"Inasmuch as the meaningful representation standard offers greater protection than the federal test, we necessarily reject [the] defendant's federal constitutional challenge" ([2])

FACTUAL BACKGROUND

Booker was convicted after a nonjury trial of falsifying business records in the second degree, issuing a false certificate, and official misconduct. In his post-conviction motion, he alleged that a grand jury witness had improper contact with a grand juror and that trial counsel failed to investigate the alleged contact, obtain a ruling on the related pretrial claim, or cross-examine the witness about the alleged contact and an employment disciplinary record. The alleged improper-contact contentions rested solely on Booker's affidavit and were unsupported by other affidavit or evidence.

PROCEDURAL HISTORY

Following a nonjury trial, the County Court, Rockland County, convicted Booker of falsifying business records in the second degree, issuing a false certificate, and official misconduct, and imposed sentence on August 27, 2019. The County Court entered an order on January 3, 2024, denying without a hearing Booker's CPL 440.10 motion to vacate the judgment. The Appellate Division affirmed that order.

DISPOSITION

affirmed

CASES CITED

- People v. Lagoa, 232 A.D.3d 910, 911
- People v. Caldavado, 166 A.D.3d 792, 794
- People v. Barrentine, 112 A.D.2d 440, 441
- People v. Baldi, 54 N.Y.2d 137, 147
- People v. Alvarez, 33 N.Y.3d 286, 294
- People v. Dunning, 148 A.D.3d 1047, 1048

OPINION

PER CURIAM.

People v Booker (2025 NY Slip Op 07394) People v Booker 2025 NY Slip Op 07394 Decided on December 31, 2025 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 December 31, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department MARK C. DILLON, J.P.

ANGELA G. IANNACCI DEBORAH A. DOWLING JAMES P. MCCORMACK, JJ. 2024-01243 (Ind. No. 186/16) [*1]The People of the State of New York, respondent, v Walter Booker, appellant. Talkin, Muccigrosso & Roberts, LLP, New York, NY (Noam B. Greenspan of counsel), for appellant. Thomas E. Walsh II, District Attorney, New City, NY (James A. Dolan of counsel), for respondent.

DECISION & ORDER Appeal by the defendant, by permission, from an order of the County Court, Rockland County (Larry J. Schwartz, J.), entered January 3, 2024, which denied, without a hearing, his motion pursuant to CPL 440.10 to vacate a judgment of the same court rendered August 27, 2019, convicting him of falsifying business records in the second degree, issuing a false certificate, and official misconduct, after a nonjury trial, and imposing sentence.

ORDERED that the order is affirmed. The County Court did not improvidently exercise its discretion in denying, without a hearing, the defendant's motion pursuant to CPL 440.10 to vacate the judgment of conviction on the ground that defense counsel was ineffective for failing to obtain a ruling on his claim, raised in his pretrial omnibus motion to dismiss the indictment, that a grand jury witness had improper contact with a grand juror and for failing to properly investigate this claim or cross-examine the grand jury witness either about this matter or about the grand jury witness's employment disciplinary record at trial.

CPL 440.30(4)(d) provides that the court may deny a CPL 440.10 motion without conducting a hearing if "[a]n allegation of fact essential to support the motion (i) is contradicted by a court record or other official document, or is made solely by the defendant and is unsupported by any other affidavit or evidence, and (ii) under these and all the other circumstances attending the case, there is no reasonable possibility that such allegation is true."

Here, the defendant's contentions pertaining to the alleged improper contact between the grand jury witness and the grand juror were based solely on his own affidavit and were unsupported by any other affidavit or evidence.

Under these and all the other circumstances attending the case, there was no reasonable possibility that such allegations were true (see *People v Lagoa*, 232 AD3d 910, 911). Moreover, defense counsel's decision not to cross-examine the grand jury witness at trial about his alleged contact with the grand juror or his employment disciplinary record appears to have been a valid trial tactic and does not bespeak an ineffectiveness of counsel (see *People v Caldavado*, 166 AD3d 792, 794; *People v Barrentine*, 112 AD2d 440, 441).

The evidence, the law, and the circumstances of this particular case, viewed in totality and as of the time of the representation, reveal that defense counsel provided meaningful representation (see *People [*2]v Baldi*, 54 NY2d 137, 147). "Inasmuch as the meaningful representation standard offers greater protection than the federal test, we necessarily reject [the] defendant's federal constitutional challenge" (*People v Alvarez*, 33 NY3d 286, 294 [internal quotation marks omitted]; see *People v Dunning*, 148 AD3d 1047, 1048).

The defendant's remaining contentions are without merit. DILLON, J.P., IANNACCI, DOWLING and MCCORMACK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

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Under these and all the other circumstances attending the case, there was no reasonable possibility that such allegations were true (see People v Lagoa, 232 AD3d 910, 911). Moreover, defense counsel's decision not to cross-examine the grand jury witness at trial about his alleged contact with the grand juror or his employment disciplinary record appears to have been a valid trial tactic

and does not bespeak an ineffectiveness of counsel (see *People v Caldavado*, 166 AD3d 792, 794; *People v Barrentine*, 112 AD2d 440, 441).

The evidence, the law, and the circumstances of this particular case, viewed in totality and as of the time of the representation, reveal that defense counsel provided meaningful representation (see *People [*2]v Baldi*, 54 NY2d 137, 147). "Inasmuch as the meaningful representation standard offers greater protection than the federal test, we necessarily reject [the] defendant's federal constitutional challenge" (*People v Alvarez*, 33 NY3d 286, 294 [internal quotation marks omitted]; see *People v Dunning*, 148 AD3d 1047, 1048).

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