

COURT OF APPEALS OF THE STATE OF NEW YORK

People v. Pichardo

1 N.Y.3d 126, 802 N.E.2d 141, 769 N.Y.S.2d 791 (2003) · Decided December 2, 2003

SUMMARY

The New York Court of Appeals held that a defendant could withdraw a guilty plea when it was induced by an explicit promise that the sentence would run concurrently with a murder sentence that was later vacated. The court rejected the argument that the promise had been fulfilled because the defendant had already served the drug sentence concurrently with the subsequently vacated murder sentence. The court reversed the Appellate Division and reinstated the order vacating the plea.

CASE DETAILS

COURT	Court of Appeals of the State of New York
WRITING FOR THE COURT	Chief Judge Kaye; Judge Ciparick; Judge Rosenblatt; Judge Read; Judge Graffeo; Judge G.B. Smith
JURISDICTION	New York
DECIDED	December 2, 2003
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendant appealed from an Appellate Division order reversing Supreme Court's order vacating his guilty plea and reinstating his drug-sale conviction.
STANDARD OF REVIEW	The Court reviewed whether vacatur of the guilty plea was warranted where the plea was induced by an explicit concurrent-sentence promise that became impossible to fulfill after the related conviction was vacated.
PRECEDENTIAL VALUE	Published opinion of the New York Court of Appeals; binding statewide precedent.
PARTIES	Juan Carlos Pichardo v. The People of the State of New York

TOPICS

- plea bargaining
- post-conviction relief
- criminal procedure
- remedies
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a defendant may withdraw a guilty plea when the plea was induced by the court's explicit promise that the sentence would run concurrently with a sentence imposed in another case and that other conviction was later vacated.
2. Whether the fact that the defendant had already completed the lesser sentence rendered plea vacatur unwarranted.

HOLDINGS

1. When a guilty plea is induced by the court's explicit promise that the defendant will receive a lesser sentence to run concurrently with a sentence in another case, and the other conviction is later overturned, the defendant may withdraw the plea and face the indictment because the sentencing promise cannot be kept.
2. The defendant's completion of the drug sentence did not preclude vacatur of the plea when the conviction supporting the promised concurrent sentence was later vacated.

KEY QUOTATIONS

"This Court on several occasions has concluded that when a guilty plea is induced by the court's explicit promise that the defendant will receive a lesser sentence to run concurrently with a sentence in another case, and that conviction is overturned, the defendant may withdraw his plea and face the indictment, since the promise cannot be kept" (129)

"But the fortuity of timing cannot be determinative of the issue, as it was not in Boston or Fuggazzato, where defendants also had served out their lesser sentences by the time they sought vacatur of their pleas." (130)

"In effect, when the murder conviction was vacated, defendant's "concurrent" time became a nullity—in the eyes of the law, it is as if he served no time at all on the murder, and his sentence on the drug charge stood alone, based on an unfulfilled and unfulfillable promise." (130)

FACTUAL BACKGROUND

Defendant was sentenced to 20 years to life after being convicted of second-degree murder in New York County. One week later, he pleaded guilty in Bronx County to selling one bag of cocaine for \$20 in exchange for a sentence of one to three years to run concurrently with the murder sentence. After the murder conviction was vacated for ineffective assistance of counsel and defendant was acquitted on retrial, he had already completed the drug sentence and moved to vacate the drug-sale conviction.

PROCEDURAL HISTORY

Defendant pleaded guilty in Bronx County to criminal sale of a controlled substance in the third degree in exchange for a sentence concurrent with his sentence for a murder conviction in New York County. After the murder conviction was vacated and defendant was acquitted on retrial, he moved under CPL 440.10 to vacate the

drug conviction, arguing that the concurrent-sentence promise could no longer be fulfilled. Supreme Court granted the motion, but the Appellate Division reversed and reinstated the conviction. The Court of Appeals reversed the Appellate Division and reinstated Supreme Court's order vacating the plea.

DISPOSITION

reversed

CASES CITED

- People v. Taylor, 80 N.Y.2d 1 (1992)
- People v. Boston, 75 N.Y.2d 585 (1990)
- People v. Fuggazzatto, 62 N.Y.2d 862 (1984)
- People v. Rogers, 48 N.Y.2d 167 (1979)
- People v. Clark, 45 N.Y.2d 432 (1978)
- People v. Lowrance, 41 N.Y.2d 303, 304 (1977)
- People v. Rivera, 195 A.D.2d 389, 390 (1st Dep't 1993)
- People v. McDonald, 1 N.Y.3d 109, 115 (2003)
- People v. Savage, 54 N.Y.2d 697, 698 (1981)
- People v. Hooper, 302 A.D.2d 894, 895 (4th Dep't 2003)
- 298 A.D.2d 101, 102 (1st Dep't 2002)