

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

People v. Johnson

2020 NY Slip Op 04581 (N.Y. Ct. App. 2020) · No. 2019-00966 · Decided August 19, 2020

SUMMARY

The New York Appellate Division, Second Department affirmed a judgment convicting Antoine Johnson of attempted murder in the second degree following his guilty plea. The court held that most ineffective-assistance claims were forfeited or refuted by the plea record, that the challenge to compliance with CPL 400.21 was unpreserved and meritless, and that the sentence was not excessive.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	William F. Mastro, J.P.; Francesca E. Connolly, J.; Valerie Brathwaite Nelson, J.; Paul Wooten, J.
JURISDICTION	New York
DECIDED	August 19, 2020
DOCKET	2019-00966
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of the County Court, Orange County, convicting him upon his guilty plea of attempted murder in the second degree and imposing sentence.
STANDARD OF REVIEW	Claims not preserved in the trial court are unreviewable on appeal absent an applicable exception. The court reviewed the ineffective-assistance and plea-voluntariness claims under the record of the plea proceeding, reviewed compliance with CPL 400.21 for substantial compliance, and reviewed the sentence for excessiveness.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Antoine Johnson v. The People of the State of New York

TOPICS

ineffective assistance

plea bargaining

criminal procedure

preservation of error

sentencing

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

QUESTIONS PRESENTED

1. Whether defendant's guilty plea forfeited his ineffective-assistance-of-counsel claims that did not directly involve the plea-negotiation process or sentence.
2. Whether the record demonstrated that ineffective assistance affected the voluntariness of defendant's guilty plea.
3. Whether the County Court failed to comply with CPL 400.21 before sentencing defendant as a second felony offender.
4. Whether the sentence imposed was excessive.

HOLDINGS

1. By pleading guilty, defendant forfeited review of ineffective-assistance claims that did not directly involve the plea-negotiation process or sentence.
2. The record did not demonstrate that ineffective assistance affected the voluntariness of defendant's guilty plea.
3. Defendant's claim that the County Court failed to fully comply with CPL 400.21 was unpreserved, and in any event the court substantially complied with the statute.
4. The sentence imposed was not excessive.

KEY QUOTATIONS

“By pleading guilty, the defendant forfeited review of any claim of ineffective assistance of counsel that did not directly involve the plea-negotiation process and sentence”

“The sentence imposed was not excessive”

FACTUAL BACKGROUND

Antoine Johnson pleaded guilty to attempted murder in the second degree in County Court, Orange County. During the plea proceeding, he stated that he had sufficient time to consult with counsel, was satisfied with counsel's representation, had not been forced to plead guilty, and was entering the plea freely and voluntarily. The County Court sentenced him as a second felony offender, and the Appellate Division found no record basis to question the plea or counsel's effectiveness.

PROCEDURAL HISTORY

The Orange County Court rendered judgment on November 20, 2018, after defendant pleaded guilty to attempted murder in the second degree and was sentenced. Defendant appealed to the Appellate Division, Second Department, which affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- People v. Petgen, 55 N.Y.2d 529, 535 n. 3
- People v. Parker, 176 A.D.3d 1106, 1107
- People v. Brown, 170 A.D.3d 878, 879-880
- People v. Fakhoury, 103 A.D.3d 664
- People v. Opoku, 61 A.D.3d 705
- People v. Soria, 99 A.D.3d 1027, 1028
- People v. Yarborough, 83 A.D.3d 875
- People v. Trimble, 137 A.D.3d 1309, 1310
- People v. Wright, 95 A.D.3d 1046, 1047
- People v. Sutton, 161 A.D.3d 783, 784
- People v. Csoke, 11 A.D.3d 631
- People v. Smothers, 175 A.D.3d 1441, 1442
- People v. Giddens, 161 A.D.3d 1191, 1194-1195
- People v. Rodriguez, 142 A.D.3d 1189, 1190-1191
- People v. Carmello, 114 A.D.2d 965
- People v. Bryant, 47 A.D.2d 51, 62-63
- People v. Suite, 90 A.D.2d 80

OPINION

PER CURIAM.

People v Johnson (2020 NY Slip Op 04581) People v Johnson 2020 NY Slip Op 04581 Decided on August 19, 2020 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 August 19, 2020 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department WILLIAM F. MASTRO, J.P.

FRANCESCA E. CONNOLLY VALERIE BRATHWAITE NELSON PAUL WOOTEN, JJ. 2019-00966 (Ind. No. 18-00208) [*1]The People of the State of New York, respondent, vAntoine Johnson, appellant. Michele Marte-Indzonka, Newburgh, NY, for appellant. David M. Hoovler, District Attorney, Goshen, NY (William C. Ghee of counsel), for respondent. DECISION & ORDER Appeal by the defendant from a judgment of the County Court, Orange County (Craig Stephen Brown, J.), rendered November 20, 2018, convicting him of attempted murder in the second degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed. By pleading guilty, the defendant forfeited review of any claim of ineffective assistance of counsel that did not directly involve the plea-negotiation process and sentence (see *People v Petgen*, 55 NY2d 529, 535 n 3; *People v Parker*, 176 AD3d 1106, 1107; *People v Brown*, 170 AD3d 878, 879; *People v Fakhoury*, 103 AD3d 664; *People v Opoku*, 61 AD3d 705).

To the extent that the defendant contends that ineffective assistance of counsel affected the voluntariness of his plea, the record demonstrates that he received an advantageous plea, and nothing in the record casts doubt on the effectiveness of counsel (see *People v Brown*, 170 AD3d at 879; *People v Soria*, 99 AD3d 1027, 1028; *People v Yarborough*, 83 AD3d 875).

Furthermore, the defendant's claim of ineffective assistance of counsel is refuted by the record of the plea proceeding, in which he acknowledged that he had been afforded sufficient time to consult with his attorney and was satisfied with his attorney's representation, that he had not been forced into pleading guilty, and that he was entering into the plea freely and voluntarily (see *People v Brown*, 170 AD3d at 880; *People v Trimble*, 137 AD3d 1309, 1310; *People v Soria*, 99 AD3d at 1028).

Nothing that occurred during the plea allocution called into question the voluntariness of the defendant's plea (see *People v Trimble*, 137 AD3d at 1309; *People v Wright*, 95 AD3d 1046, 1047). The defendant's contention that the County Court failed to fully comply with CPL 400.21 before sentencing him as a second felony offender is unpreserved for appellate review (see *People v Sutton*, 161 AD3d 783, 784; *People v Csoke*, 11 AD3d 631).

In any event, the court substantially complied with the statute, and there is no indication that the defendant intended to challenge the constitutionality of his prior conviction (see *People v Smothers*, 175 AD3d 1441, 1442; *People v Giddens*, 161 AD3d 1191, 1194-1195; *People v Rodriguez*, 142 AD3d 1189, 1190-1191; *People v Carmello*, 114 AD2d 965; *People v Bryant*, 47 AD2d 51, 62-63).

The sentence imposed was not excessive (see *People v Suitte*, 90 AD2d 80). MASTRO, J.P., CONNOLLY, BRATHWAITE NELSON and WOOTEN, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court