State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: July 3, 2014 105459

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,
v MEMORANDUM AND ORDER

TERRANCE J. WRIGHT,
Appellant.

Calendar Date: June 2, 2014

Before: Stein, J.P., McCarthy, Garry, Lynch and Devine, JJ.

Norbert A. Higgins, Binghamton, for appellant.

Gerald F. Mollen, District Attorney, Binghamton (Joann Rose Parry of counsel), for respondent.

Lynch, J.

Appeal from a judgment of the County Court of Broome County (Smith, J.), rendered September 12, 2012, convicting defendant upon his plea of guilty of the crime of robbery in the second degree.

In April 2008, defendant was indicted on one count of robbery in the first degree for forcibly stealing money from a cab driver in the City of Binghamton, Broome County in February 2008. He moved out of state and was not arraigned on the indictment until December 2011. He then moved to dismiss the indictment based upon a violation of his statutory and constitutional rights to a speedy trial. During the pendency of the hearings on that motion and before any ruling was made, defendant accepted a plea agreement and entered a guilty plea to

robbery in the second degree and waived all pending pretrial motions, as well as his right to appeal. He was thereafter sentenced, as agreed, as a second felony offender to a prison term of eight years, with five years of postrelease supervision. He now appeals.

Defendant's primary contention on appeal is that his guilty plea must be vacated because it was the product of coercion in that the plea agreement offered by the People was impermissibly conditioned on his waiver of his pending constitutional speedy trial motion, which he argues was meritorious (see People v Blakley, 34 NY2d 311, 313-315 [1974]; People v White, 32 NY2d 393, 399-400 [1973]; see also People v Alexander, 19 NY3d 203, 205, 212-219 [2012]; People v Callahan, 80 NY2d 273, 278-279, 282 [1992]; People v Seaberg, 74 NY2d 1, 9 [1989]). While the claims regarding the coercive and involuntary nature of the plea survive his guilty plea and appeal waiver (see People v Seaberg, 74 NY2d at 9),[1] they were not raised in a postallocution motion to withdraw the plea (see CPL 220.60 [3]) but, rather, were raised for the first time on appeal.[2] As such, the People contend that defendant failed to preserve this claim for appellate review.

Generally, a claim that a guilty plea is invalid is not preserved for appellate review unless first raised in the trial court (see People v Lopez, 71 NY2d 662, 665 [1998]; People v Jones, 114 AD3d 1080, 1081 [2014]). Except as set forth below, this holds true for a claimed violation of a defendant's constitutional right to a speedy trial (see People v Archie, 116 AD3d 1165, 1165 [2014]). "Under certain circumstances, this preservation requirement extends to challenges to the

---

[1] By comparison, defendant's statutory speedy trial claim, also unpreserved, was forfeited by his guilty plea and appeal waiver (see People v Devino, 110 AD3d 1146, 1147 [2013]).

[2] Since the conditional plea/waiver is clear from the face of the record, defendant would not have been able to challenge the plea in a CPL article 440 motion (see People v Louree, 8 NY3d 541, 546 n [2007]). A motion to withdraw the plea under CPL 220.60 (3), however, was certainly an available remedy.

voluntariness of a guilty plea" (People v Peque, 22 NY3d 168, 182 [2013] [citations omitted]; see People v Tyrell, 22 NY3d 359, 363-364 [2013]; People v Murray, 15 NY3d 725, 726; People v Louree, 8 NY3d 541, 546 [2007]). Notably, the Court of Appeals has recently cited to People v Blakley (34 NY2d at 315) as an example of the "mode of proceedings" exception to the preservation rule (People v Hanley, 20 NY3d 601, 604, 605 n 2 [2013]). In that case, the Court held that conditioning a plea on a waiver of a constitutional speedy trial claim is "inherently coercive" (People v Blakley, 34 NY2d at 313). The narrow mode of proceedings exception speaks to fundamental flaws that implicate "rights of a constitutional dimension that go to the very heart of the process" (People v Hanley, 20 NY3d at 604 [internal quotation marks and citation omitted]; see People v Becoats, 17 NY3d 643, 650-651 [2011]). Where, as in Blakley, the People condition a plea offer on the defendant's waiver of his or her constitutional speedy trial claim, the integrity of the judicial process has been undermined (see People v Callahan, 80 NY2d at 280; People v Seaberg, 74 NY2d at 9; People v Blakley, 34 NY2d at 315; People v White, 32 NY2d at 400).

Here, the People expressly conditioned the plea offer on defendant's withdrawal of his constitutional speedy trial motion, while the hearing on this issue was still pending. To make matters worse, the offer was set to expire as soon as the hearing resumed (see People v White, 32 NY2d at 400). This is the type of prosecutorial bartering expressly prohibited as "inherently coercive" in People v Blakley (34 NY2d at 313). A trial court has a core obligation to recognize and prevent such an unfair tactic, but here the court simply reiterated the impermissible condition of the plea and waiver (compare People v Walston, ___ NY3d ___, ___, 2014 NY Slip Op 04229, *3 [2014]). Inasmuch as this case involves a "mode of proceedings error for which preservation is not required" (People v Tyrell, 22 NY3d at 364), we find that defendant's claim that his plea was coerced is reviewable on direct appeal. Further, based upon the foregoing, we find merit in this claim and, therefore, conclude that the plea must be vacated.

We turn next to defendant's further claim that he was denied his constitutional right to a speedy trial and that the

indictment should, therefore, be dismissed. On the first day of the speedy trial hearing, the People presented testimony from the investigating officers as to efforts made to identify and locate defendant prior to the indictment.[3] The matter was adjourned at defendant's request to assess whether he would testify. Prior to adjourning the proceeding, County Court reminded the People that "if you want to call warrant witnesses, feel free to do that. I've indicated I'd let you do that anyway." At the next appearance, defendant entered a plea of guilty without further testimony being presented. Accordingly, since the record is insufficient to resolve the merits of defendant's constitutional speedy trial claim, the case must be remitted to County Court for further proceedings on the motion (see People v Lee, 66 AD3d 1116, 1121 [2009]).

Stein, J.P., McCarthy, Garry and Devine, JJ., concur.

ORDERED that the judgment is reversed, on the law, plea vacated, and matter remitted to the County Court of Broome County for further proceedings not inconsistent with this Court's decision.

ENTER:

Robert D. Mayberger
Clerk of the Court

---

[3] Although the People did not explicitly state that they had rested, the dialogue between County Court and counsel indicates a misunderstanding that only preindictment delay was at issue (see People v Edwards, 271 AD2d 812, 812 [2000]). Since the extensive delay here was postindictment, the People bear the burden of demonstrating good cause for the delay (see People v Decker, 13 NY3d 12, 14 [2009]; People v Romeo, 12 NY3d 51 [2009], cert denied 558 US 817 [2009]; People v Vernace, 96 NY2d 886, 887 [2001]).