

People v Blackwell

2007 NY Slip Op 34587(U)

June 18, 2007

Supreme Court, Westchester County

Docket Number: 06-1423

Judge: Richard A. Molea

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

YOLANDA BLACKWELL,

Defendant.

-----X
MOLEA, J.

RELIEF REQUESTED

FILED and ENTERED
June 18, 2007
WESTCHESTER
COUNTY CLERK

9

DECISION AND ORDER

Indictment No. 06-1423

FILED
JUN 18 2007
TIMOTHY G. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

By oral motion, the People move the Court to impose an enhanced sentence upon the defendant under the instant indictment in excess of the twelve (12) year determinate term of imprisonment which it had conditionally agreed to impose pursuant to its approval of the negotiated plea agreement reached between the prosecution and defense upon the defendant's entry of a guilty plea before the Court on March 15, 2007 due to the defendant's alleged failure to comply with the Court's directive that she fully cooperate with the Westchester County Department of Probation throughout their preparation of her pre-sentence investigation report (hereinafter, PSR). In connection with the instant application, it is alleged by the People that the statements made by the defendant to her assigned probation officer during the interview conducted in connection with the preparation of her PSR reflect the defendant's denial of responsibility for the criminal conduct which was the subject of the guilty plea she entered before the Court, thereby justifying the enhancement of her agreed upon sentence.

FACTUAL BACKGROUND

On March 15, 2007, the defendant entered a guilty plea before this Court to a single count of Assault in the first degree, charged in violation of Penal Law § 120.10, in full satisfaction of the instant indictment. The conduct underlying this charge concerned the defendant's repeated submersion of the lower half of her infant son's body into a bathtub which she had filled with scalding water, causing third degree burns to his buttocks, perineum, penis, scrotum, posterior thighs, calves, feet, waist and abdominal area. The defendant's conduct in this regard caused her infant son to sustain significant third degree burns to 20% of his body, resulting in permanent scarring and necessitating numerous surgeries and an extensive stay in the intensive care unit of the hospital where he was treated. When questioned by the police during their investigation into this incident, the defendant provided oral, written and videotaped statements indicating, in substance, that she had repeatedly immersed her infant son in the scalding water in an effort to express the anger she felt toward her infant son's father.

On March 15, 2007, the defendant entered a guilty plea before this Court to a single count of Assault in the first degree in full satisfaction of the instant indictment, in exchange for a sentence promise from the Court which was placed on the record providing for a determinate twelve (12) year term of imprisonment, a five (5) year term of post-release supervision, a surcharge of \$270.00 and permanent orders of protection for the defendant's two children. Prior to the Court's acceptance of the defendant's guilty plea, the defendant was placed under oath and questioned by Assistant District Attorney Laura Murphy. During her examination by ADA Murphy before the Court, the defendant specifically admitted under oath that she had

intentionally caused serious physical injury to her infant son through her use of scalding water. Immediately after the defendant completed her allocution in response to ADA Murphy's examination, the Court examined her briefly with respect to the knowing and voluntary nature of her guilty plea and received satisfactory responses. The Court then provided the defendant with a detailed admonition concerning the qualified nature of the sentence commitment she had received from the Court, indicating that same was conditioned upon her agreement to provide truthful responses to the questions asked by the Department of Probation during her interview conducted in connection with the preparation of her pre-sentence report. Specifically, the Court admonished the defendant on the record as follows:

My acceptance of your plea and my commitment to you to impose the sentence that I indicated requires that if you choose to answer questions put to you by the Probation Department when you are interviewed for your pre-sentence investigation and report, that you answer those questions truthfully and consistently with the answers that you gave here today. If I find, upon reading the pre-sentence report, that you have not answered those questions truthfully and consistently with the answers given here today, I will not keep my sentence to you, I will not allow you to withdraw your plea and I will, in all probability, sentence you to more years in jail, up to maximum of 25 years. Do you understand what I have just said ?

The defendant responded by affirmatively stating that she understood the Court's admonition and in appreciation of the defendant's recognition of these terms, the Court announced its acceptance of the defendant's plea and adjourned the case to May 10, 2007 for sentencing.

On May 7, 2007, the Court received a copy of the defendant's PSR from the Department of Probation and upon reviewing same, identified an apparent inconsistency between the statements made by the defendant under oath during her guilty plea allocution and those statements attributed to the defendant during her interview conducted in connection with the preparation of her PSR by Investigating Probation Officer Susann Carelli. Upon the appearance

of the parties before the Court on May 10, 2007, the People were afforded an opportunity to address the Court before the imposition of sentence. At that time, ADA Laura Murphy related that after reviewing the statements attributed to the defendant in her PSR, she believed that the defendant had violated the Court's admonition to provide a truthful account of her criminal conduct to the Department of Probation during her PSR interview. Acting upon the content of the defendant's PSR, ADA Murphy presented an oral application to the Court seeking the enhancement of the defendant's sentence beyond the determinate term of imprisonment of twelve (12) years which had been conditionally promised to the defendant upon the Court's acceptance of her guilty plea. After consulting with the defendant, defense counsel, Clare Degnan, Esq., indicated that the defendant would not consent to the enhancement of her sentence and requested that the Court afford her an opportunity to be heard in connection with the People's application. The Court acceded to defense counsel's request by adjourning the defendant's sentencing and scheduling a hearing pursuant to *People v. Hicks* (98 NY2d 185) to determine whether the enhancement of the defendant's sentence was authorized and appropriate based upon the People's claim that the statements attributed to the defendant in her PSR by Investigating Probation Officer Carelli reflect a failure by the defendant to cooperate with the Department of Probation during the preparation of her PSR as required by the Court upon its conditional acceptance of the plea bargain she had negotiated with the People in this case. Accordingly, the Court adjourned this matter until June 4, 2007 for the examination of witnesses and the presentation of oral argument in connection with the so-called *Hicks* hearing.

FINDINGS OF FACT

On June 4, 2007, the Court commenced a *Hicks* hearing in this matter and directed the People to present evidence in support of their application for the enhancement of the defendant's sentence. The People presented the testimony of a single witness, Investigating Probation Officer Susann Carelli, who testified that she has been employed by the Westchester County Department of Probation for 33 years and has been responsible for preparing Pre-sentence Investigation Reports for the past 23 years, completing approximately 20 such reports per month. In connection with her preparation of the PSR in this case, Officer Carelli interviewed the defendant personally in an interview room of the Westchester County Jail on March 27, 2007.¹

After initially questioning the defendant about matters pertaining to her personal and family background, as well as her physical and mental health, Officer Carelli asked the defendant to describe the events that resulted in the injury of her infant son. The defendant then related to Officer Carelli that after she observed that her infant son had soiled himself during the night, she brought him into the bathroom and undressed him in preparation for a bath. The defendant then advised Officer Carelli that she left her infant son unattended in the bathroom while the bathtub was filling with scalding water, and that upon returning to the bathroom ten minutes later, she observed that her son was already in the bathtub. When questioned further by Officer Carelli about this account, the defendant specifically denied placing her son into the bathtub and bath water, as she suggested that her only wrongdoing concerned her failure to check the temperature

¹ The defendant's PSR was admitted into evidence as People's Exhibit # 3 during these hearing proceedings.

of the bath water.

Having taken note of the inconsistencies between the defendant's latest admission and her earlier admissions concerning the circumstances under which her infant son was burned, Officer Carelli read the defendant the admission she had given previously to members of the Yonkers Police Department. After being confronted with these inconsistencies, although the defendant persisted in her denial that she had repeatedly dipped her infant son into the scalding bath water several times, she did admit to inadvertently placing him into the scalding bath water while acknowledging again that her wrongdoing in this matter concerned only her failure to check the temperature of the bath water before she bathed the victim.

Despite the defendant's belated acknowledgment that she was responsible for placing her infant son into the scalding bath water which caused him to suffer extraordinarily painful and disfiguring burns, her statements to the Department of Probation in this regard reflected mere admissions to her negligent failure to ascertain the temperature of the bath water before she bathed her infant son. Taken as a whole, the statements made by the defendant to the Department of Probation concerning her conduct with respect to this incident were woefully insufficient to accurately reflect the nature of the conduct she had admitted to when she entered her guilty plea in this case, as she had previously allocuted to intentionally burning her infant son with bath water.

CONCLUSIONS OF LAW

As the record in this case plainly reveals that the defendant specifically admitted under oath during her plea allocution that she had intentionally caused her infant son to suffer serious physical injuries in the form of third degree burns to 20% of his body when she immersed him in scalding water, the Court took notice of the fact that the defendant had denied the intentional nature of her conduct when she was interviewed by the Department of Probation during the preparation of her PSR. Upon reviewing the detailed admonition this Court had given to the defendant when it accepted her guilty plea, conditioning same upon her agreement to provide truthful responses to the questions asked by the Department of Probation during the preparation of her PSR, the Court further recognized that the defendant was clearly apprised that the potential consequences of such conduct would include the Court's enhancement of her sentence to a greater number of years of imprisonment than that originally provided for under her plea agreement.

Although it has been well-settled for many years that a sentencing court is authorized to impose an enhanced sentence where a criminal defendant violated the terms of the plea agreement he had entered into with the court, such as where he was arrested and charged with having committed a crime subsequent to the entry of his guilty plea (*People v. Outley*, 80 NY2d 702), where he failed to appear before the court for sentencing as directed (*People v. Walters*, 273 AD2d 418), or where he failed to complete a drug rehabilitation program (*People v. Pike*, 276 AD2d 649), the failure of a defendant to accept responsibility for the criminal conduct underlying his guilty plea during his PSR interview was not recognized as a legitimate basis for

the enhancement of a negotiated sentence until the Court of Appeals decided *People v. Hicks* (98 NY2d 185) in 2002. Upon deciding the *Hicks* case, the Court recognized the importance of the pre-sentence investigation and the resulting preparation of an accurate PSR which the sentencing court may rely upon when considering information relevant to the imposition of an appropriate sentence (*see, People v. Hicks, supra*, at 188-189). Placing such a high degree of significance upon the preparation of an accurate PSR, the High Court held that the failure of the defendant to “answer the Probation Department truthfully about his crime” constituted a breach of the express terms of his plea bargain, justifying the enhancement of his sentence (*see, People v. Hicks, supra*, at 189).

Here, the record plainly reveals that the defendant pled guilty to a single count of Assault in the first degree in full satisfaction of the remaining counts charged under the instant indictment, in exchange for a sentence promise from the Court. Prior to the Court’s acceptance of her guilty plea and its communication of its sentence promise, the Court listened to the defendant’s allocution to her use of scalding water to intentionally cause serious physical injuries to her infant son. The Court then examined the defendant with respect to the knowing and voluntary nature of her guilty plea and after receiving satisfactory responses, provided the defendant with a detailed admonition concerning the qualified nature of the sentence commitment she had received from the Court, indicating that same was conditioned upon her agreement to provide truthful responses to the questions asked by the Department of Probation during her PSR interview. Specifically, the Court unequivocally advised the defendant that if the answers she provided to the questions asked of her by the Department of Probation were inconsistent with the facts she had allocuted to during her plea *voire dire*, the Court would not

keep its sentencing promise and would likely sentence the defendant to an additional period of imprisonment up to a maximum term of twenty-five (25) years. After receiving these explicit warnings, the defendant acknowledged her understanding of them and agreed to them as she accepted the terms of her plea bargain.

Thereafter, the record demonstrates that when the defendant was questioned by the Department of Probation during her PSR interview about the circumstances of the instant offense, the defendant specifically denied that she had intentionally caused her infant son to suffer serious physical injuries when she immersed him into the scalding water contained in a bathtub. The credited testimony of Investigating Probation Officer Carelli further revealed that when the defendant was given an opportunity to correct her account to reflect consistency with her plea allocution, she refused to do so and specifically denied that she had intentionally caused injury to her son as she suggested that her only wrongdoing in this matter concerned her failure to check the temperature of the bath water before she bathed her infant son. Upon the record developed during the hearing conducted in this matter, the Court finds that the defendant's statements to the Department of Probation in this regard reflected admissions to mere negligent conduct which were woefully insufficient to accurately reflect the true nature of her conduct when she intentionally burned her infant son with bath water, as she admitted to under oath when she entered her guilty plea in this case.

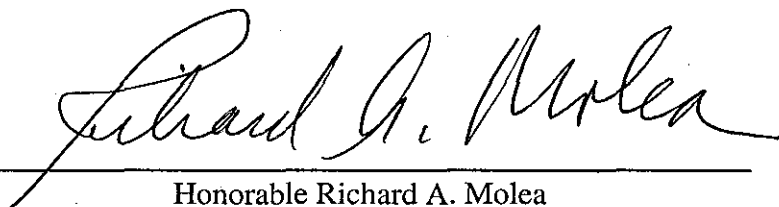
Upon the record of all of the proceedings conducted in this case which are pertinent to the instant application, this Court finds that the defendant's failure to provide truthful answers to the questions asked of her by the Department of Probation about her criminal conduct has foreclosed the preparation of an accurate and reliable pre-sentence investigation report which this Court

could have relied upon when considering information relevant to the imposition of an appropriate sentence in this case. The Court further finds that the defendant's actions in this regard constitute a clear breach of those terms of the plea agreement she entered into with the Court in this case which required her to provide truthful responses to the questions asked by the Department of Probation during her PSR interview, thereby justifying the enhancement of her sentence in this case under the authority of *People v. Hicks* and its progeny (*see, People v. Godfrey*, 33 AD3d 623, *lv. denied* 8 NY3d 846; *see also, People v. Gonzalez*, 9 Misc.3d 344; *People v. Rosario*, 3 Misc.3d 952; *People v. Powell*, 196 Misc.2d 977).

Based upon the foregoing, the People's application for an order of this Court imposing an enhanced sentence due to the defendant's failure to fully cooperate with the Department of Probation, as directed by this Court as a condition of its acceptance of her guilty plea, by making statements during her PSR interview which reflected her denial of responsibility for the criminal conduct which was the subject of the guilty plea she entered before the Court is granted, although the defendant shall be afforded the opportunity to be heard during a sentencing hearing to be conducted on June 19, 2007 in connection with the Court's determination of the appropriate degree of the Court's enhancement of the defendant's sentence in this case.

The foregoing shall constitute the Decision and Order of the Court.

Dated: White Plains, New York
June 18, 2007



Honorable Richard A. Molea
Acting Justice of the Supreme Court

TO:

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