

People v Ingvarsdottir
2013 NY Slip Op 34060(U)
April 19, 2013
Supreme Court, Westchester County
Docket Number: 10-1485S
Judge: Richard A. Molea
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

FILED and ENTERED
April 19, 2013
**WESTCHESTER
COUNTY CLERK**

-against- *WR* **FILED**
APR 19 2013
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

DECISION AND ORDER

Superior Court Information
No. 10-1485S

HELGA INGVARSDOTTIR,

Defendant.

-----X

MOLEA, J.

Upon considering the defendant's instant application seeking an order of the Court dismissing the instant superior court information pursuant to Section 380.30 of the Criminal Procedure Law (CPL), the Court has considered the following papers: notice of motion, motion to dismiss, affirmation, affirmation in reply, and motion to dismiss/reply to the People of counsel for the defendant, Jonathan R. Pearson, Esq., and the affirmation in opposition and memorandum of law of Assistant District Attorney V. Rashawn Woodley.

RELIEF REQUESTED

By notice of motion, the defense moves the Court pursuant to Criminal Procedure Law (CPL) § 380.30 to enter an order dismissing the instant superior court information with prejudice upon a finding that the time period between the entry of the defendant's guilty pleas before this Court to the crimes of Grand Larceny in the first degree and Grand Larceny in the second degree on December 14, 2010 and the presently scheduled sentencing date of April 23, 2013 has operated to divest the Court of jurisdiction to sentence the defendant.

FACTUAL BACKGROUND

This criminal action was commenced on November 4, 2010 upon the filing of a felony complaint against the defendant and her co-defendant, Vickram Bedi, in the Mount Kisco Village Court, charging both of them jointly with a single count of Grand Larceny in the first degree in violation of Penal Law §155.42. While this matter remained pending in the Mount Kisco Village Court, the People and retained counsel for the defendant, Robert Mancuso, Esq., elected to participate in a conference presided over by this Court for the purpose of engaging in plea negotiations. At the request of the defense, this Court scheduled the plea conference for this matter to take place on December 14, 2010 in anticipation of the defendant's entry of a guilty plea on that date. On December 14, 2010, the Court conducted a plea conference concerning the charges pending against the defendant under Superior Court Information (SCI) 10-1485S with former defense counsel, Robert Mancuso, Esq., and Assistant District Attorneys Steven Vandervelden and Nicole Gamble. On that date, the defendant was produced before the Court in the presence of Mr. Mancuso and the Court conducted a conference with the prosecutors and Mr. Mancuso, who advised the Court that the parties had reached an agreeable disposition of this case. During this conference, the parties advised the Court that the defendant intended to enter guilty pleas to the crimes of Grand Larceny in the first degree and Grand Larceny in the second degree pursuant to a cooperation agreement they had entered into with one another which provided, in substance, that the defendant's anticipated sentence in this case would be subject to a variety of conditions which were set forth in a written agreement entitled Conditions of Cooperation (the Agreement) which was negotiated between the parties and signed by the

defendant, Mr. Mancuso, ADA Gamble and ADA Vandervelden on December 13, 2010. The Court was advised of the parameters of the Agreement during this conference by defense counsel, although it did not participate in either the drafting or execution of same, who indicated that he had previously discussed the specific terms of the plea agreement with the defendant. Defense counsel further indicated that the defendant intended to avail herself of that negotiated plea agreement with the understanding that she was required to testify on behalf of the People at any future grand jury proceeding, or any other court proceeding conducted in this case, and that if her cooperation was satisfactory to the People, they would recommend that she receive a sentence of probation supervision which did not include any term of incarceration.

Upon the conclusion of this conference, the Court addressed the defendant on the record and explicitly advised her of the terms of the proposed plea agreement which had been related to the Court by Mr. Mancuso, specifically relating that it understood that the defendant sought to enter guilty pleas to the class "B" felony offense of Grand Larceny in the first degree and the class "C" felony offense of Grand Larceny in the second degree, with the understanding that upon a conviction of Grand Larceny in the first degree the minimum potential sentence provides for an indeterminate term of imprisonment of between 1 and 3 years, and the maximum potential sentence provides for an indeterminate term of imprisonment of between 8½ and 25 years. The Court further stated that it understood that the defendant's negotiated plea bargain would require her to make restitution of 1.8 million dollars plus 10 percent interest to a realty company. The Court then asked Mr. Mancuso and the defendant if this accurately reflected their understanding of the terms of the proposed plea agreement, which prompted an affirmative response on the record from Mr. Mancuso on the defendant's behalf and his own.

On the record, the defendant waived her right to a preliminary hearing under the then-pending felony complaint and executed a written waiver of her right to be prosecuted by an indictment, following Mr. Mancuso's indication that he had previously discussed this matter with the defendant on several occasions. Following the Court's arraignment of the defendant under the instant SCI, Mr. Mancuso stated that the defendant had authorized him to enter guilty pleas under both Count One and Count Two charged thereunder, charging the crimes of Grand Larceny in the first and second degrees, respectively (hereinafter, the crimes of conviction). The Court then observed the defendant provide answers, under oath, to the detailed questions asked by Assistant District Attorney (ADA) Vandervelden during his *voire dire* of the defendant in connection with the entry of her guilty pleas. The Court finds significance in the affirmative responses provided by the defendant when she was questioned by ADA Vandervelden about her satisfaction with the representation and advice provided by Mr. Mancuso in connection with her decision to enter her guilty pleas, further affirming that she had an adequate opportunity to discuss the consequences of her guilty pleas with him, and that no promises or representations had been made to her with respect to her sentence commitment beyond the terms of the Agreement. As revealed to the defendant upon her execution of the Agreement, the substance of which was made known to the Court during the sidebar conference conducted immediately prior to the entry of her guilty pleas, the defendant's ultimate sentence was contingent upon her satisfaction of several conditions of the Agreement which would necessitate that her sentencing be delayed until the People's investigation and prosecution of a related criminal case was

completed.¹

The Court further notes that during the defendant's plea allocution, Mr. Mancuso specifically advised the Court that the defense wanted to defer ordering a pre-sentence report (PSR) for an unspecified period of time, first indicating a period of "a few weeks", then indicating "until things shake out", before a PSR would be ordered by the Court in anticipation of a definitive sentencing date. As it was understood between the parties that the sentencing of the defendant to the most favorable terms would need to follow her satisfaction of her obligations under the Agreement, despite the uncertainty amongst all parties concerning the timetable, Mr. Mancuso successfully sought a reduction of the defendant's bail to an amount which she was prepared to post and would ensure her prompt release from custody without any objection by the People. Furthermore, with these same interests in mind, Mr. Mancuso successfully petitioned the Court to permit the defendant to travel out-of-state while she remained at liberty pending sentence, subject to her advance communication with the Court prior to any departure from the State of New York. Thereafter, following the Court's acceptance of the defendant's guilty plea, Mr. Mancuso assented to an adjournment of the case until March 22, 2011 for an appearance before the Court to monitor the progress of the prosecution of Vickram Bedi and the defendant's readiness for the scheduling of a sentencing date.

By letter dated March 10, 2011, Mr. Mancuso wrote to the Court to request an adjournment of the defendant's next appearance before the Court until May 17, 2011 while awaiting "a clearer picture of what will be happening to the co-defendant's case" which he

¹It was revealed to the Court during this sidebar conference that the related criminal case concerned an individual named Vickram Bedi, with whom the defendant had shared a residence prior to her arrest in this case.

indicated had been copied to the defendant via e-mail. By letter dated May 12, 2011, Mr. Mancuso wrote to the Court to request an adjournment of the defendant's next appearance before the Court until July 19, 2011 in response to the suggestion of ADA Vandervelden for further control purposes, which he indicated had been copied to the defendant via e-mail. By letter dated July 13, 2011, Mr. Mancuso wrote to the Court to request an adjournment of the defendant's next appearance before the Court until October 18, 2011 for further control purposes following a conversation he had with ADA Vandervelden. By letter dated October 17, 2011, Mr. Mancuso wrote to the Court to request an adjournment of the defendant's next appearance before the Court until January 17, 2012 for further control purposes following a conversation he had with ADA Vandervelden. By letter dated January 6, 2012, Mr. Mancuso wrote to the Court to request an adjournment of the defendant's next appearance before the Court until April 24, 2012 for further control purposes following a conversation he had with ADA Vandervelden.

On April 24, 2012, the defendant appeared before the Court with Mr. Mancuso, who participated in a conference with the Court and the People before requesting an adjournment until May 9, 2012. By letter dated May 4, 2012, Mr. Mancuso wrote to the Court to request an adjournment of the defendant's next appearance before the Court until June 15, 2012 in following his conversation with ADA Vandervelden for further "control purposes, pending the disposition of the co-defendant's case", which he indicated had been copied to the defendant. By a second letter dated May 4, 2012, Mr. Mancuso wrote to the Court to request that the defendant be permitted to travel to the State of Arizona and remain there for approximately 10 days to attend a wedding. By letter dated June 14, 2012, Mr. Mancuso wrote to the Court to request an adjournment of the defendant's next appearance before the Court until September 18, 2012 for

further control purposes following a conversation he had with ADA Vandervelden, which he indicated had been copied to the defendant via e-mail. By letter dated August 14, 2012, Mr. Mancuso wrote to the Supreme Court, Westchester County (Neary, J.) due to the unavailability of this Court during that week, to request that the defendant be permitted to travel to the State of Massachusetts and remain there for approximately 7 days, noting therein that “[s]entencing in this case has been adjourned because my client may be called to testify against the co-defendant”. By letter dated September 13, 2012, Mr. Mancuso wrote to the Court to request an adjournment of the defendant’s next appearance before the Court until January 29, 2013 for further control purposes following a conversation he had with ADA Gamble, which he indicated had been copied to the defendant via e-mail.²

On September 20, 2012, a Notice of Substitution and Entry of Attorney was filed with the Court by the defendant’s newly retained attorney, Jonathan R. Pearson, Esq., reflecting his entry as the attorney of record for the defendant in this case in place of Mr. Mancuso. In addition, on this same date Mr. Pearson filed a motion with this Court seeking the withdrawal of the defendant’s previously entered guilty pleas pursuant to Section 220.60 of the Criminal Procedure Law (CPL). While the defendant’s CPL 220.60 motion remained pending before this Court, by letter dated October 11, 2012, Mr. Pearson wrote to the Court to request that the defendant be permitted to travel to the State of Pennsylvania and remain there for approximately 3 days. By Decision and Order, filed and entered on October 24, 2012, this Court denied the defendant’s

²It is significant to note that on August 23, 2012, this Court presided over a conference with in the Trial Assignment Part and scheduled the trial of Westchester County Indictment 10-1485, entitled the *People of the State of New York v. Vickram Bedi et al.*, to commence on October 22, 2012.

motion seeking the withdrawal of her previously entered guilty pleas under the instant superior court information. By letter dated October 30, 2012, Mr. Pearson wrote to the Court to request that the defendant be permitted to travel to the State of Vermont and remain there for approximately 7 days.

On November 20, 2012, the matter of *People of the State of New York v. Vickram Bedi et al.*, was resolved upon the entry of a guilty plea by Vickram Bedi to the crime of Grand Larceny in the first degree under Westchester County Indictment 10-1485 before the Westchester County Court (Zambelli, J.) and the case was adjourned until January 22, 2013 for sentencing proceedings.³ Following several additional adjournments of Vickram Bedi's sentencing date, he was sentenced before the Westchester County Court (Zambelli, J.) on March 5, 2013.

On January 17, 2013, Mr. Pearson wrote to the Court seeking "assistance" concerning the defendant's obligation to provide her home address and telephone number to the Westchester County Department of Probation while acknowledging therein his "understanding . . . that this information would then be provided to the Probation Department for purposes of a pre-sentence investigation." By letter dated January 18, 2013, the Court responded to Mr. Pearson's January 17th letter and therein advised him of the defendant's obligations under CPL 390.50 and directed the defendant to disclose her updated contact information to the Westchester County Department of Probation (WCDP) in order to facilitate their preparation of her pre-sentence investigation report (PSR). On January 29, 2013, upon the appearance of the defendant with Mr. Pearson, the Court indicated that it would order the preparation of the defendant's PSR and agreed to schedule

³On January 22, 2013, Vickram Bedi's sentencing was adjourned by the Westchester County Court (Zambelli, J.) until February 19, 2013, and on February 19, 2013, Vickram Bedi's sentencing was again adjourned by the Westchester County Court until March 5, 2013.

the defendant's sentencing proceeding for April 23, 2013 in anticipation of the sentencing of Vickram Bedi sometime before that date.

On March 5, 2013, the defendant brought the instant motion seeking an order of the Court dismissing the instant indictment arguing that the Court has been divested of jurisdiction to sentence the defendant.

CONCLUSIONS OF LAW

Although CPL 380.30(1) provides that a "sentence must be pronounced without unreasonable delay", the burden to ensure that this statutory directive is complied with rests upon the prosecution and its agents, as the defendant "bears no burden to pursue his own sentencing" (*People v Hatzman*, 218 AD2d 185, 189; accord *People v Drake*, 61 NY2d 359, 362). Satisfaction of this burden by the prosecution is critical, as an unreasonable delay of the imposition of sentence divests the sentencing court of jurisdiction over the defendant which compels the dismissal of the accusatory instrument upon which the underlying conviction had been entered (*see People v Drake*, 61 NY2d at 367). In this regard, the determination of the reasonableness of the delay requires consideration of the length of the delay along with an examination of the reasons for same, as only the period of delay which is the result of prosecutorial negligence or mistake will result in the sentencing court's loss of jurisdiction (*see People v Drake*, 61 NY2d at 367). Consistent therewith, where the period of delay preceding the imposition of sentence can be attributed to legal proceedings or other conduct of the defendant which frustrates the prompt pronouncement of sentence, the People will be excused of their

burden for that period (*see People v Drake*, 61 NY2d at 367; *see also People v Reyes*, 214 AD2d 233; *People v Headley*, 134 AD2d 519).

Here, it is undisputed that the defendant entered her guilty pleas under the instant indictment on December 14, 2010 pursuant to a cooperation agreement which provided, in substance, that the defendant's anticipated sentence in this case would be subject to a variety of conditions set forth therein which had been agreed to and signed by the defendant in the presence of her retained attorney, Robert Mancuso, Esq., prior to the entry of her guilty pleas. Specifically, in advance of the Court's acceptance of the defendant's guilty pleas, the defendant acknowledged that her sentence in this case would be guided by the terms and conditions placed upon the record during her plea allocution, as well as those contained in the Agreement, which included a condition that the defendant testify satisfactorily on behalf of the People at any future Grand Jury and trial proceedings. It was further related to the Court during the pre-plea conference with ADA Vandervelden and Mr. Mancuso that the primary focus of the defendant's cooperation would concern the prosecution of Vickram Bedi, despite the absence of his name from the Agreement.

It is further undisputed that the defendant's sentencing was repeatedly adjourned from March 22, 2011 until January 29, 2013 at her request and with the consent of the People, obviating the need for her personal appearance before the Court while all parties awaited the conclusion of the Vickram Bedi prosecution. It is also significant to note that the defendant has remained at liberty throughout the entire period extending between her entry of her guilty pleas on December 14, 2010 and the present date, and has enjoyed several unfettered opportunities to travel outside of the State of New York during this same period. Most significantly, as

acknowledged by Mr. Mancuso in several of his adjournment request letters, the defense remained mindful throughout the period subsequent to the entry of the defendant's guilty pleas that the defendant's sentence would not go forward until she had satisfied her obligation to make herself available to testify under the explicit terms of her cooperation agreement. As set forth in the Agreement and placed upon the Court's record upon the entry of her guilty pleas, the defendant understood that her satisfaction of her obligations under the Agreement was a necessary condition precedent to the People's recommendation to the Court that she receive a sentence of probation supervision without any additional period of incarceration, rather than the potential maximum sentence of an indeterminate term of imprisonment of between 8½ and 25 years. Furthermore, this Court notes that it had received no communication in any form whatsoever from either the defendant, her former retained attorney, Mr. Mancuso, or her present retained attorney, Mr. Pearson, since the entry of her guilty pleas on December 14, 2010, indicating that the defendant sought to be sentenced prior to the conclusion of the prosecution of Vickram Bedi without satisfying her cooperation agreement.

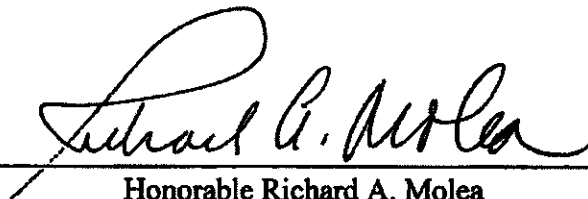
Upon consideration of the record presented, the Court finds that the delay of the defendant's sentencing has not been attributable to prosecutorial neglect or negligence, but rather has stemmed from the pendency of legal proceedings involving the prosecution of Vickram Bedi in which the defendant willingly participated pursuant to the terms of the cooperation-related Agreement which she knowingly, intelligently and voluntarily entered into with the People with the advice of counsel when she entered her guilty pleas in this case. Under these circumstances, this Court finds that the delay of the defendant's sentencing has not been unreasonably protracted

(see *People v Drake*, 61 NY2d at 366; *People v Friel*, 53 AD3d 667, *lv. denied* 11 NY3d 854; *People v Borgwine*, 23 AD3d 491, *lv. denied* 6 NY3d 809; *People v Arroyo*, 22 AD3d 881 *lv. denied* 6 NY3d 773; *People v Anonymous*, 16 AD3d 317, *lv. denied* 5 NY3d 784).

Based upon the foregoing, the Court finds that the period of delay extending between the entry of the defendant's guilty pleas to the crimes of Grand Larceny in the first degree and Grand Larceny in the second degree before this Court on December 14, 2010 and the present scheduled sentencing date of April 23, 2013 does not reflect an unreasonably prolonged period which has operated to divest this Court of jurisdiction to sentence the defendant. Accordingly, the defendant's present motion seeking the dismissal of the instant superior court information pursuant to CPL 380.30 is summarily denied.

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

Dated: White Plains, New York
April 19, 2013



Honorable Richard A. Molea
Acting Justice of the Supreme Court