

**People v Jones**

2017 NY Slip Op 33006(U)

September 20, 2017

County Court, Westchester County

Docket Number: 16-1338

Judge: Helen M. Blackwood

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

**FILED** 

DECISION and ORDER

-against- SEP 22 2017

KEVIN JONES,

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

Indictment No.: 16-1338

Defendant.

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Blackwood, J.

This defendant has been charged by indictment number 16-1338 with burglary in the third degree (PL §140.20) (4 counts), attempted burglary in the third degree (PL §110/140.20), criminal mischief in the second degree (PL §145.10), criminal mischief in the third degree (PL §145.05[02]) (3 counts), petty larceny (PL §155.25) (4 counts), and criminal mischief in the fourth degree (PL §145.00[1]).

On May 24, 2017, the defendant appeared in court with his attorney and after being sworn, plead guilty to every count of the indictment. At the time, the court promised to sentence him to, *inter alia*, one year in the Westchester County Penitentiary to be served consecutively with another on year sentence, and concurrent time on the remaining counts so that essentially, the defendant's sentence would be two years in the Westchester County Penitentiary. During the allocution of the defendant, the court advised him that there were conditions that he needed to meet in order to remain eligible for the promised sentence. In this regard, the court stated:

Court: I want to be clear that the sentence promise will not be binding if you are rearrested for committing any new crimes, or for reasons within your control you fail to meet with and cooperate with the Department of Probation, or if you fail to appear at sentencing . . .

Do you understand that?

Defendant: Yes, your honor. (Plea Minutes, p. 11, line 1).

Notably, the court did not advise the defendant that it was a condition of his plea for him to answer the questions of the Department of Probation truthfully, only that he was to “meet with and cooperate with the Department of Probation.”

On or about June 13, 2017, the defendant was interviewed by the Department of Probation via teleconference while he was incarcerated in the Westchester County Jail. During that interview, the defendant declined to give some important information to the Probation Officer interviewing him, including, his wife’s name, any family history, dates of birth, and children’s names. In fact, the report indicates that the defendant “was seemingly unwilling to answer the majority of the social history questions pertaining to this investigation,” (Pre-sentence report, p. 8). Furthermore, as to the incidents to which the defendant plead guilty, he denied having taken part in any of them except for one, and attempted to mitigate his behavior by stating that he was “coming off a drug high when committing the offense,” (Id.). Furthermore, the report indicates that the defendant did not “fully participate in the interview process and was fixated on what the police reports either said or did not say,” (Id.).

Upon reading the pre-sentence report, the court determined that a hearing was necessary to determine whether or not the defendant had violated the conditions of the sentence promise which required him to cooperate with the Department of Probation’s interview for the purposes of the pre-sentence report.

On August 16, 2017, a hearing was held to determine whether the defendant had satisfied all of the conditions required to be sentenced as promise or if the defendant violated the condition that he was required to cooperate with the Department of Probation and therefore, subject to an enhanced sentence by the court.

The People called Probation Officer Amy Kraus of the Westchester County Department of Probation to testify. PO Kraus has been employed by the Department of Probation for approximately 6 years and has been assigned to the pre-sentence report unit for the last three years. She testified to having prepared approximately 200 to 220 pre-sentence reports each year since she has been assigned to that unit.

PO Kraus testified that she interviewed the defendant via teleconference on June 13, 2017. She testified that she began by explaining the interview process to the defendant and advising him that she would be obtaining a social history from him, including information about his family, education/work history, and history of drug and alcohol use. Also, she advised the defendant that she would be obtaining his description of the offenses to which he plead guilty.

PO Kraus testified that during the interview process, the defendant admitted only one offense and stated that he did not commit the other offenses. She testified that the defendant continued to reiterate the fact that he wanted to review the police reports and throughout the course of the interview, frequently redirected the interview by referring back to the police reports so that he did not have to answer other questions he wished to avoid. The defendant gave little information to PO Kraus regarding his social history and the offenses.

The Criminal Procedure Law requires that when a person is convicted of a felony, the court must order a pre-sentence investigation of the defendant (CPL §390.20[1]). The pre-sentence report contains a wide range of information, including the defendant's criminal history, and pedigree, as well as his social, employment, family, economic, education, and personal history. This information is obtained in the context of the circumstances attending to the commission of the offense or offenses to which the defendant has plead guilty or those of which he has been convicted.

A sentencing promise made in conjunction with a guilty plea is conditioned upon “its being lawful and appropriate in light of the subsequent pre-sentence report or information obtained from other reliable sources,” (People v. Selikoff, 35 N.Y.2d 227, 238, 318 N.E.2d 784 [1974]). As a result, it is imperative that the defendant cooperate with the preparation of the pre-sentence investigation in order to give the court a true picture of the circumstances surrounding the offense or offenses.

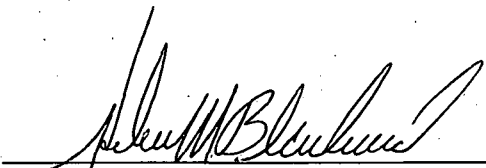
While the defendant was not as forthcoming or candid as one would expect in this case, it cannot be said that his failure to answer the Department of Probation’s questions truthfully about his crime or family history hindered the preparation of an accurate report for the court’s use at sentencing. The court possesses sufficient information from other sources such as the DCJS/NCIC regarding the defendant’s New York state legal history, out of state arrests and convictions records from the State of Virginia, police reports from the City of Yonkers Police Department, and the defendant’s statements regarding his limited education and employment circumstances and drug history.

In addition, a review of the plea minutes did not reveal that the condition of cooperation with probation also required the defendant to be “truthful” with the Department of Probation. The court was free to impose such a condition on the defendant when interviewed by probation and require him to answer all questions in conformity with his plea or any other condition that the court sought to impose which would not violate statutory provisions or public policy (see People v. Hicks, 98 N.Y.2d 185, 774 N.E.2d 205 [2002]; People v. Terrell, 41 A.D.3d 1044, 839 N.Y.S.2d 812 [2007]).

For all of these reasons, any application by the People to enhance the defendant's sentence based upon his failure to cooperate with the Department of Probation during his interview is denied.

This constitutes the decision of this court.

Dated: White Plains, New York  
September 20, 2017.



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HON. HELEN M. BLACKWOOD  
Westchester County Court

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