| **People v Scott** |
| --- |
| 2023 NY Slip Op 34975(U) |
| March 29, 2023 |
| County Court, Westchester County |
| Docket Number: Indictment No. 70007-15/001 |
| Judge: George E. Fufidio |
| Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service. |
| This opinion is uncorrected and not selected for official publication. |

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

-against-

CARLA SCOTT,

Defendant.

-----------------------------------------------------------------X

FILED
MAR 29 2023
TIMOTHY C. ID
COUNTY CLERK
COUNTY OF WESTCHESTER

DECISION AND ORDER
Indictment No. 70007-15/001
Legacy # 550/15

FUFIDIO, J.

The Defendant, Carla Scott, has moved under CPL 440.47 for resentencing under Penal Law §60.12. The Court has considered the Defendant's moving papers and exhibits, as well as the People's response thereto, which includes their affirmation in opposition, their memorandum of law and attached exhibits. In addition, the Court has conducted an evidentiary hearing in which it heard from, among others, expert witnesses for the Defendant and the People and the Defendant herself, after which the parties submitted further memoranda for the Court's review. Upon consideration of the foregoing, the Court finds as follows:

On April 18, 2015, the Defendant ran over the victim, Glynis Pinto, with her car. Ms. Pinto was intimately involved with the Defendant's boyfriend, Kenneth Hill. Evidence adduced at trial showed that on the days leading up to the killing, the Defendant stalked Mr. Hill and Ms. Pinto, made increasingly more serious threats to Mr. Hill via text messaging, staked out Mr. Hill and Ms. Pinto's houses overnight and took pictures of Ms. Pinto's car near Mr. Hill's house. After trial, a jury convicted the Defendant of manslaughter in the first degree, among other charges and she was sentenced to 25 years in prison, a sentence that was upheld on appeal as not excessive (*People v Scott*, 165 AD3d 1178 [2nd Dept. 2018]). She now moves for a reduced sentence based upon CPL 440.47, claiming that a significant contributing factor to her homicidal behavior was that throughout her life she had been the victim of abuse at the hands of various abusers which has manifested as post-traumatic stress disorder (PTSD) and it was a post-traumatic stress reaction to the shock of seeing Ms. Pinto coming at her car, which led to her killing.

CPL 440.47, enacted in 2019 as the Domestic Violence Survivor's Justice Act (DVSJA), is a mechanism for post-conviction relief which gives applicant's retroactive access to the sentencing scheme set forth in Penal Law §60.12, enacted in 1998, which offered domestic violence victims reduced sentences at their original sentencing date. The DVSJA sets forth a multi-step procedure whereby an applicant must first submit an *ex parte* request for permission to apply for relief under the act and must meet certain statutory criteria. Next, if such permission is granted, the Defendant may file his/her actual motion which is then referred to the District Attorney for a response. The DVSJA also sets forth criteria for material that must be submitted with the actual motion in order to establish a *prima facie* right to a Penal Law §60.12 resentencing hearing and to avoid dismissal. The motion, "must include at least two pieces of evidence corroborating the applicant's claim that he or she was, *at the time of the offense*, a victim of domestic violence subjected to *substantial* physical, sexual or psychological abuse inflicted by a member of the same family or household" (CPL 440.47 (2)(c) *emphasis added*). This creates a temporal nexus between the abuse and the crime, and it also creates a quantum of abuse that needs to be met.

The Court found that the Defendant met that initial threshold and ordered that a hearing be held to determine whether the Defendant qualified for resentencing under Penal Law section 60.12. In order to be so eligible the Defendant must demonstrate that, "...(a) at the time of the instant offense, the defendant was a victim of domestic violence subjected to substantial physical, sexual or psychological abuse inflicted by a member of the same family or household as the defendant as such term is defined in subdivision one of section 530.11 of the criminal procedure law; (b) such abuse was a significant contributing factor to the defendant's criminal behavior; (c) having regard for the nature and circumstances of the crime and the history, character and condition of the defendant, that a sentence of imprisonment pursuant to section 70.00, 70.02, 70.06 or subdivision two or three of section 70.71 of this title would be unduly harsh, and therefore may instead impose a sentence in accordance with this section" (Penal Law sec. 60.12).

The People have once again asked the Court to consider the "at the time of the offense, the defendant was a victim of domestic violence" clause in CPL 440.47 and Penal Law sec. 60.12. They argue the language creates a temporal nexus between the abuse and the crime that has not been met by the Defendant whom they argue had not been subjected to physical abuse

for at least four months prior to Ms. Pinto's killing. On the other hand, the Defendant argues that a lifetime of physical abuse has manifested in the Defendant as PTSD and that although she was not subject to physical abuse at the time of the offense, her reaction to events just prior to the killing, specifically that she was taken by surprise by Ms. Pinto's presence, was the result of her abuse induced PTSD.

In addition to the "at the time" argument, the People also contend that the Defendant's testimony is not credible; that she has not demonstrated that her history of abuse significantly contributed to her criminal behavior and that the sentence, under the circumstances to be considered by the court, was not unduly harsh.

Turning first to the "at the time" argument; the People put forth that *People v Williams*, 198 AD3d 466 [1st Dept. 2021] compels the Court to find the *abuse* suffered by the defendant/petitioner must occur in close, though not simultaneous temporal proximity to the crime. The instant case differs somewhat from *Williams* in that here, the Defendant avers that past substantial abuse has manifested as PTSD and that her criminal behavior in this case was triggered by an abuse caused, post-traumatic stress reaction to seeing her victim, Glynis Pinto, in front of the car she was in. *Williams* only concerned itself with past instances, but not how those abusive acts have manifested in the behavioral aspects of a particular defendant. This Court finds that it is well within the legislative intent to consider PTSD caused by abuse when considering a defendant's CPL 440.47 motion. [1]

The revision and retroactive access to Penal Law sec. 60.12 and the creation of CPL 440.47 that grants such access are laws that are part of a larger progressive trend of the legal system in general and criminal jurisprudence in particular. They are representative of a more holistic response to explaining the root causes of criminal behavior and appropriately addressing them (*see, e.g*, Steven Zeidman, *Rotten Social Background and Mass Incarceration: Who is a Victim?*, 87 Brook. L. Rev. 1299 [2022]; Cynthia Godsoe, *The Victim/Offender Overlap and Criminal System Reform*, 87 Brook. L. Rev. 1319, 1327-28 [2022]). It is within that larger context that the Court locates the legislative intent. The New York State Assembly justified the bill leading to the legislative enactment of CPL 440.47 and the changes to Penal Law sec. 60.12

[1] PTSD, it seems, may have many simultaneous root causes. For example, trauma inflicted on a defendant can be one; trauma inflicted on another by the defendant can be another. (Cynthia Godsoe, *The Victim/Offender Overlap and Criminal System Reform*, 87 Brook. L. Rev. 1319, 1327-28 [2022]). Or it might not even be the effect of abuse or assaultive behavior at all.

as the recognition that, "Over the past 30 years, domestic violence has been increasingly recognized as a national epidemic. Unfortunately, the significant advances made by the anti-violence movement have stopped short of reforming the unjust ways in which the criminal justice system responds to and punishes domestic violence survivors who act to protect themselves from an abuser's violence" (2019 NY A.B. 3972). Further, "All too often, when a survivor defends herself and her children, our criminal justice system responds with harsh punishment instead of with compassion and assistance. Much of this punishment is a result of our state's current sentencing structure which does not allow judges discretion to fully consider the impact of domestic violence when determining sentence lengths. This leads to long, unfair prison sentences for many survivors" (*Id.*). Indeed, the final bill that was signed into law goes even farther than simply allowing such access to defendants who have defended themselves or their children against their abusers. Based on the forgoing and the discussion during the voting on the bill (Chamber Video/Transcript at pages 8-20, 2019 New York Assembly Bill A03974, March 4, 2019) it is clear that a strict interpretation of the legislature's own words would absurdly frustrate their intent (*People v Graubard*, ___ AD3d ___, 2023WL2506352 [2nd Dept. 2023]; *Seltzer v City of Yonkers*, 286 AD 557 [2nd Dept. 1955]). It is easy to imagine a scenario similar to the one presented here where a defendant has suffered a lifetime of abuse and who clearly suffers from PTSD as a result but is unable to access relief because they were not in an actively abusive relationship at the time the crime was committed versus someone in a relatively new abusive relationship that was ongoing at the time the crime was committed. There is no way, in this Court's opinion, that this legislature intended the result of excluding one type of domestic violence survivor while championing another. This comports with other similar mitigation type statutes, such as with extreme emotional disturbance, for example, where the conditions that led to the disturbance were simmering (*People v Patterson*, 39 NY2d 288, 303 [1976][Though an extremely emotionally disturbed act does not need to be spontaneously undertaken; "it may be that a significant mental trauma has affected a defendant's mind for a substantial period of time, simmering in the unknowing subconscious and then inexplicably coming to the fore]) or with the so called "insanity" defense, where the defendant's mental disease or defect may have been chronic but cannot form the basis for the defense unless the defendant is under the influence of its effects at the time the crime was committed (*People v Ludwigsen*, 159 AD2d 591 [2nd Dept. 1990]). What is operative in those two prior examples and what is operative here is what was the

defendant's state of mind at the time of the offense. By referencing the traditional "state of mind" defenses and dispensing with any requirement that one had to have been previously raised in order to be eligible for this kind of relief, it appears that the legislature intended this operation as well (Penal Law sec. 60.12(1)). Whether that state of mind was caused by the immediate after effects of abuse or whether it was the result of post-traumatic stress brought about from a lifetime of abuse but which was triggered by something other than abuse, it seems that the impact is the same, though it would also seem that as one moves farther away from the actual abuse and more into the general psychological make up of a particular defendant, determining this element becomes harder.

The legislature imposed some other limitations on a defendant's access to this relief. It is not enough that the effects of the abuse contributed to a defendant's criminal behavior, rather its contribution must have been *significant* (Penal Law sec. 60.12). In this case, the Court does not entirely discredit the Defendant's expert witness, however, it does not agree with his assessment that the Defendant's PTSD was a significant contributing factor, so as to make her eligible for Penal Law sec. 60.12 relief. His explanation of PTSD and how it impacts a person is credible, as was the Defendant's experience with abuse to the point where it may well have been a contributing factor to her PTSD. Nevertheless, the Court found the People's expert's opinion, that the Defendant has an anti-social personality disorder, to be credible as well and that anti-social personality disorder provides another contributing factor to the Defendant's criminal behavior. The Court, not hearing otherwise, can see how both PTSD and anti-social personality disorder could exist mutually in a person and has no real way of discerning exclusivity. Certainly, given the facts in this case, especially the ongoing feud between the Defendant and the victim and the Defendant's propensity to attack female rivals, the Court cannot say that either one significantly contributed, only that each was a likely factor, but at the same time cannot say by a preponderance of the evidence that there was any *significant* contributing factor.

Next, the legislature gave the courts discretion where, even if it was found that relatively contemporaneous substantial abuse was a significant contributing factor to a defendant's criminality, relief could still be denied if, "...the nature and circumstances of the crime and the history, character and condition of the defendant" did not warrant such relief (Penal Law sec. 60.12(1)). In some cases, the application of this element of the statute seems pretty clear, such as when the victim of abuse attacks their abuser, or if a defendant up until their crime has led a

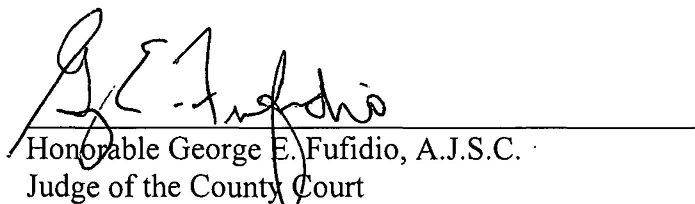
relatively blameless life. Here, however, the Defendant's history, character and condition do not warrant relief.

To begin, though certainly not dispositive, the jury was presented with and rejected a justification defense and on appeal her maximum sentence of 25 years in state prison was upheld as not excessive (*People v Scott*, 165 AD3d 1178 [2nd Dept. 2018]; *lv. denied*, 32 NY3d 1209 [2019]). The sentencing court (Zambelli, J.) described the killing as a, "ruthless act driven by anger and hate" and it was evident that this was the tragic, if not somewhat predictable ending to a long simmering feud between the Defendant and her victim Glynis Pinto over Kenneth Hill, that ultimately led the Defendant, after the victim had turned away from the car that the Defendant was in, to put her car into drive and drive into and then over the victim, killing her. Unfortunately, this type of behavior was not isolated to this incident. The Defendant has a well documented history of violence towards female rivals she feels as being competitors for her love interests' affections. Critically, those violent tendencies did not stop there. Her criminal history is replete with violence directed at intimate partners, police, CPS workers and court personnel as well. Nor did it stop once she was incarcerated. Even in prison she has demonstrably been unable to comport her behavior as demonstrated by numerous prison rule violation convictions for violence and threatened violence. It is evident that the Defendant has not demonstrated, in or out of prison, that if she did earn a reduced sentence that she would not simply slip back into her established patterns of violent behavior. Thus, although the Court finds that the Defendant did indeed suffer various forms of abuse in her life and suffers from PTSD as a result, it does not agree that it excuses the rightfully earned sentence she is now serving for the killing of Glynis Pinto and the violence she has inflicted upon the citizens of Westchester County. The Court finds that the defendant's sentence for killing Glynis Pinto is not unduly harsh.

Accordingly, based upon the foregoing, the defendant's application under CPL 440.47 on this case is denied.

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

Dated: White Plains, New York
March 29 2023



Honorable George E. Fufidio, A.J.S.C.
Judge of the County Court



[* 6]

TO: Shea Scanlon-Lomma, Esq.
Assistant District Attorney
Westchester County District Attorney's Office
111 Dr. Martin Luther King, Jr. Blvd.
White Plains, New York 10601

Matthew Montana, Esq.
*Attorney for the Defendant*
1019 Park Street
P.O. Box 668
Peekskill, New York 10566

John R. Lewis, Esq.
*Attorney for the Defendant*
26 Hemlock Drive
Sleepy Hollow, New York 10591

Ronda Brown
Deputy Chief Clerk
Westchester Supreme and County Court

Criminal Calendar Clerk's Office
Westchester Supreme and County Court