PEOPLE OF THE STATE OF NEW YORK
COUNTY OF NEW YORK PART 93

----------x

THE PEOPLE OF THE STATE OF NEW YORK,

Persistent Felony Offender Decision

-against-

Ind. No. 50/2008

ROBERT McCOY,

Defendant.

----------x

EDWARD J. McLAUGHLIN, J.:

Defendant was convicted by a jury on May 19, 2008, of two counts of an Attempt to Commit Assault in the First Degree (PL 110/120.10 [1]) and one count of Burglary in the Second Degree (PL 140.25 [2]). The jury concluded that, on May 17, 2007, the defendant committed those crimes by burglarizing a store above which people lived and attempting to seriously injure two police officers by swinging a heavy crowbar at each officer in an attempt to avoid arrest. In view of the defendant's approximately fifteen previous felony convictions, this court ordered a hearing pursuant to CPL 400.20 (2) to determine whether the defendant should be classified as a discretionary persistent felony offender and sentenced in accordance with such a finding (PL 70.10).

Through counsel, defendant urges this court to impose consecutive determinate eight-year sentences on the violent felonies of burglary of a dwelling and assault on a police officer, in order to approximate the minimum sentence a persistent felony offender adjudication would mandate. For the reasons which follow, the court declines to accept counsel's creative effort on behalf of his client.

There is little reason to expand significantly beyond defendant's criminal history and his trial and persistent felony hearing testimony. Defendant testified, matter of factly, that his "thing" is to break the locks of closed businesses, mostly in the early morning hours, and thereby enter commercial properties to steal money and other items. He contends that he did so routinely because "the system" let him get away with doing so for over a decade. He was allowed to get away with those crimes because an error-riddled fingerprint system failed to detect that defendant was a criminal recidivist using as many as ten aliases. He testified, even boasted, to having committed significantly more burglaries than those for which he was arrested. Defendant did not accept responsibility for any of his conduct. Rather, he blamed his actions on drug addiction and New York's flawed fingerprint record keeping.

At his hearing, defendant testified that he had never tried to get help for his "addiction" (if that word properly applies to him) or for his drug usage. He said he never sought help because he liked using drugs. The court notes that when reciting his routine pre-crime preparation, defendant described the care with which he sought appropriate locations to burglarize. By explaining how he picked, or rejected, prospective building targets, defendant's account belies the acts of a drug craving, out-of-control addict. Rather defendant portrayed himself as sufficiently clear headed to identify buildings for burglary, break into those buildings, take property, and escape. He even pridefully explained that when he had a co-perpetrator, he made the other person break into the building.

The gist of defendant's position is that he was entitled to commit as many commercial burglaries as he could get away with because such crimes are not significant, he did not engage in any violent conduct during or after them, and the system's stupidity allowed, if not encouraged, his repeated, rampant criminality. He is defiantly unrepentant.

Apparently, in 1995, following his arrest in Bronx County, the Division of Criminal Justice Services and the state NYSIID system caught up to the defendant. From out of a bureaucratic haze emerged his identity as the person who had used so many names and repeatedly failed to return to court. Following that arrest, defendant resolved five cases by guilty plea and received a controlling prison term of two one half years to five years for those cases.

After serving that term of imprisionment, he was released. He obviously was undaunted and unaffected by that chastisement and undeterred despite knowing that future arrests would reveal the extent of his criminal past. Also, if he knew about the persistent felony offender concept, or its potential applicability to him, neither fact altered his conduct. Nor did the awareness affect his actions on May 17, 2007.

Released from prison June 27, 2002, after completing his multiple concurrent terms for several burglaries, on August 18, 2002, he committed another. Since his release from prison following his serving one and one-half to three years for that case, he committed the offenses for which the jury found him guilty here. He also committed the burglary to which he plead guilty following his trial conviction. That disposition, additionally, covered the unindicted burglary he admitted committing after the police found his DNA at the crime scene.

The case here follows a familiar pattern-up to a point. Defendant located and surveyed a site, then, using a crowbar, he expertly broke the lock and partially raised the gate of a business on Fifth Avenue above which someone resided. He entered the

business, rummaged around and then emerged with purloined property and the crowbar.

Others too were at work that night. As defendant was looting, they were looking. Two anti-crime officers had followed defendant for a time using their own skill presciently to anticipate defendant's impending effort. The police officers in plain clothes, one, a five foot tall female, approached the nearly successful defendant pistols in hand, while their police shields hung noticeably from their necks. Each ordered defendant several times to stop and turn so they could see his hands. Defendant, at the time, was backing out of the store with the crowbar and pilfered items in his hands. Contrary to the defendants claims, the jury found that defendant threw the stolen clothes towards the officers and then swung the crowbar, weighing about sixteen pounds, at the upper torso and heads of the police officers. Defendants supported his denial that he swung the crowbar by blithely assuring the jurors that, if he had done so, the police would have shot him. His reasoning-no shot, no swing.

The merchant, whose store defendant burglarized, testified about his need to repair the lock, gate, window and a small part of the store's interior and to clean the merchandise-stolen shirts that the police returned to him. The complainant on the larceny mentioned losing business as a result having to close for repairs. He bemoaned the inconvenience he experienced because of defendant's conduct.

The similar effect upon the store owners, affected by defendants' countless other such crimes, can be imagined. The deleterious effect upon New York City's citizens generally and upon specific neighborhoods, bedeviled and besieged by defendant's sanctimonious criminality, is significant. Next to one's own home, seeing a merchant with whom you have frequent friendly interaction, the place in which you are comfortable, where you obtain prescriptions, groceries and other items, being victimized is disheartening to New Yorkers.

Defendant has, in fact, been violent in his past. He, however, smugly denies the violence. For example, in the instance of his robbery of a woman's purse, defendant claims that the event merely was a "snatch and grab." He contended that he did not use force against the victim notwithstanding his pleading guilty to Robbery in the Third Degree.

Defendant also has a history of resisting arrest. This court received evidence that defendant had resisted arrest three times in the past, including once when he hit an officer (Rosado) in the elbow with a crowbar as the officer attempted to arrest the defendant for the burglary of a building. Defendant resolved each case by a guilty plea that did not require him to admit such conduct. Consequently, defendant testified that he is not violent

and has no violence in his past. The court finds otherwise.

Despite counsel's plea for the consecutive eight year determinate terms, the court will neither impose that sentence nor any other sentence outside those permitted for a persistent felony offender. Defendant's extraordinary criminal history, as predictor of his future conduct, cannot be altered or seriously questioned by the sincere and eloquently voiced hopes of his attorney who argues that time will transform defendant. Defendant merits a life term with an appropriate minimum.

For the reasons stated herein, defendant is a person whose history and character as well as, his repetitive felony convictions, PL 70.10(1a), and the nature and circumstances of his criminal conduct clearly warrants the court, in its discretion, finding him to be a persistent felony offender. CPL 400.20(1). The court makes that finding and will impose such a sentence. This is the opinion and order of the court.

Dated: November 3, 20008

NOV 03 2008

J. EDWARD J. McLAUGHLIN