

People v Black

2017 NY Slip Op 33102(U)

March 30, 2017

County Court, Dutchess County

Docket Number: 57/2016

Judge: Peter M. Forman

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STATE OF NEW YORK: COUNTY OF DUTCHESS
COUNTY COURT

INDEX NO.: 2016/1178

THE PEOPLE OF THE STATE OF NEW YORK,

DECISION AND ORDER

Plaintiff,

Ind. No. 57/2016

- against -

William V. Grady,
District Attorney
by: Michael W. Brady, Esq.

MARCUS ANTHONY BLACK

Steven K. Patterson, Esq.
Counsel for Defendant

Defendants

HON. PETER M. FORMAN, County Court Judge

On December 9, 2016, the defendant was convicted, after a jury trial, of Burglary in the Second Degree, a Class C Violent Felony, in violation of §140.25(2) of the Penal Law and Criminal Possession of Stolen Property in the Fourth Degree, a Class E Felony, in violation of §165.45(1) of the Penal Law. The court ordered a pre-sentence report from the Dutchess County Office of Probation and Community Corrections, and adjourned the matter for sentencing.

The Dutchess County District Attorney's Office filed, pursuant to §70.08 of the Penal Law and §400.16 of the Criminal Procedure Law, a Persistent Violent Felony Offender Statement with the court and served same upon the defendant.

A hearing was conducted by this court on February 17, 2017 pursuant to §70.08 of the Penal Law to determine whether, in fact, the defendant could be treated as a persistent violent felony offender at sentencing.

The court heard testimony from two witnesses: Glenn Freisatz, an identification specialist from the Division of Criminal Justice Services (DCJS), and Kimberly Sesselman, an

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administrative assistant responsible for maintaining inmate records at the Department of Corrections and Community Supervision (DOCCS). Based on their testimony, which the court gives full credence to, and the several exhibits entered into evidence during the course of the hearing, I find as follows:

The defendant was convicted in Supreme Court, New York County, on March 19, 1980 of Robbery in the First Degree (a Class B Violent Felony) in violation of §160.15 of the Penal Law, and Robbery in the Second Degree in violation of §160.10 of the Penal Law. He was sentenced to an indeterminate term of incarceration of five to fifteen years in state prison.

Furthermore, on March 19, 1996, the defendant, using an alias, Larry Brown, was convicted of Robbery in the Second Degree (a Class C Violent Felony) in violation of §160.10(1) of the Penal Law in New York County Criminal Court. He was sentenced to an indeterminate term of incarceration of five to ten years in state prison for that offense.

The sentences set forth above were imposed prior to December 11, 2014, the date of the commission of the crime of Burglary in the Second Degree, of which the defendant presently stands convicted. The court finds that these two predicate convictions have been established by the People beyond a reasonable doubt. See, People v. Leon, 10 NY3d 122 (2008).

Therefore, the record establishes that the defendant has two prior judgments of conviction for Robbery in the First Degree under §160.15, a Class B Violent felony in 1980 and Robbery in the Second Degree, a Class C Violent felony offense in 1996. The 1996 conviction was rendered within 10 years of 1980 conviction when periods of the defendant's incarceration are excluded (See, Penal Law §70.04 [1][6][iv]). The instant conviction was rendered within 10 years of his 1996 conviction, again excluding his periods of incarceration for that offense, making him eligible for treatment by this court as a persistent violent felony offender pursuant to §70.08 of

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the Penal Law and §400.16 of the Criminal Procedure Law. See, People v. Dritto, 178 AD2d 428 (2d Dept., 1991).

The court comes to that conclusion by referring to the DOCCS records which demonstrate that the defendant was incarcerated for a total of 2318 days (or 6.35 years) on his 1980 conviction which placed him safely within the 10 year window in advance of his March 27, 1993 arrest which resulted in his 1996 conviction. He served an additional 3568 days in prison for the 1996 conviction (or 9.77 years), which is within 10 years of his December 11, 2014 arrest for the instant offense.

DECISION

Now that the court has determined that the defendant is a persistent violent felony offender, §60.05(6) of the Penal Law sets forth that an indeterminate sentence of imprisonment is mandatory. The maximum term must be life and the minimum term, for his conviction of Burglary in the Second Degree, may not be less than 16 years nor more than 25 years. See, §70.08 of Penal Law.

The court finds, after reviewing all of the evidence in the record, that the history and character of the defendant and the nature and circumstance of his criminal conduct indicate that extended incarceration and life-time supervision will best serve the public interest. See, §70.10(2) of the Penal Law and §400.20(1) of the Criminal Procedure Law. In this case, the defendant has been convicted of nine felonies during his 36-year criminal career. In addition, he has been convicted of 48 misdemeanor crimes dating back to 1975. The defendant is the text book definition of a career criminal. He has used at least two different aliases over the years in an attempt to confuse the criminal justice system as to who he really is. At 56 years of age, this

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defendant was still breaking into occupied houses at night and stealing other people's property (including guns and other weapons). The community needs to be protected from life-long criminals like Marcus Black.

Therefore, this court is sentencing the defendant to an indeterminate term of 25 years to life on count one of the indictment, Burglary in the Second Degree. The court is also sentencing the defendant to an indeterminate term of imprisonment of two to four years on count two of the indictment, Criminal Possession of Stolen Property in the Fourth Degree. These two sentences shall be served consecutively.

The defendant is also ordered to pay the mandatory surcharges and fees of \$375 for each offense, totaling \$750.

So Ordered.

Dated: Poughkeepsie, NY
March 30, 2017



PETER M. FORMAN
COUNTY COURT JUDGE

TO: WILLIAM V. GRADY, ESQ.
Dutchess County District Attorney
Michael W. Brady, Esq.
236 Main Street
Poughkeepsie, New York 12601

Steve K. Patterson, Esq.
Attorney for Defendant Marcus Anthony Black
25 Market Street
Suite 700
Poughkeepsie, NY 12601