

To be argued by:
David Billingsley
15 mins. requested

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION: FIRST DEPARTMENT

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

TYRONE ROBINSON,

Defendant-Appellant.

BRIEF FOR DEFENDANT-APPELLANT
TYRONE ROBINSON
Ind. Nos. 1467-2014 & 3751-2017 (N.Y. Cty.)

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Supreme Court of the State of New York
Appellate Division: First Department

The People of the State of New York,
Respondent,

— against —

Tyrone Robinson,
Defendant-Appellant.

PRELIMINARY STATEMENT

This is an appeal from judgments rendered on Mar. 13, 2018, by Supreme Court, New York County. Tyrone Robinson was convicted, after guilty pleas, of one count of criminal possession of a controlled substance in the third degree, N.Y. Penal Law § 220.16(1), and one count of criminal sale of a controlled substance in the third degree, N.Y. Penal Law § 220.39(1), under Ind. No. 1467-2014, and one count of bail jumping in the first degree, N.Y. Penal Law § 215.57, under Ind. No. 3751-2017. Mr. Robinson was sentenced to six years in prison with three years' post-release supervision on each of the controlled substance counts, and two to four years in prison on the bail jumping count, all to run concurrently.

Justice Richard Weinberg presided over the guilty plea under Ind. No. 1467-2014, and Justice Patricia Nunez presided over the guilty plea under Ind. No. 3751-2017, and sentencing. Timely notices of appeal were

filed. No stay of execution has been sought. Mr. Robinson is currently serving his term of imprisonment.

QUESTIONS PRESENTED

Where Tyrone Robinson's offenses reflected his 30-year struggle with addiction, and where he showed prospects for success in drug treatment, did the sentencing court impose an unduly harsh and excessive sentence by exceeding the District Attorney's recommendation?

STATEMENT OF FACTS

Tyrone Robinson has been a drug addict for more than 30 years. Presentence Investigation Face Sheet, Ind. No. 1467-2014 (hereinafter, “PSI 1467-2014”) at 6. Mr. Robinson stated that he has used crack cocaine “daily” from the age of 17 up until his most recent arrest prior to sentencing in the instant cases, at the age of 48. *Id.* As a result of his longstanding drug addiction and drug-seeking behavior, Mr. Robinson has eleven past offenses for drug possession and sales, and 10 theft offenses, including third-degree robbery. PSI 1467-2014 at 2-3.

In 2014, Mr. Robinson was charged with one count of criminal possession of a controlled substance in the third degree, N.Y. Penal Law § 220.16(1), and one count of criminal sale of a controlled substance in the third degree, Penal Law § 220.39(1), for his alleged possession and sale of cocaine. P. 9-10. On August 12, 2014, he pled guilty to both counts. P.¹ 11-12. In exchange for his guilty pleas, Mr. Robinson was mandated to attend drug treatment programs and avoid future arrests. P. 7. Upon

¹ Citations “P.” followed by a page number refer to the transcript of plea proceedings held on Aug. 12, 2014. Citations “S.” refer to plea and sentencing proceedings held on Mar. 13, 2018.

successful completion of these conditions, Mr. Robinson would be allowed to withdraw his guilty pleas, and the cases would be dismissed. P. 7-8.

Mr. Robinson attended inpatient and outpatient programs at Daytop Village and Project Create. PSI 1467-2014 at 6. During this time, according to the court, the record showed that Mr. Robinson did suffer “a few relapses” but he was “doing all right at the end.” S. 10. Mr. Robinson completed the program at Daytop Village, and was on his way to completing his programming at Project Create, however he failed a drug test just prior to graduation. *Id.* Because he was “scared” of the result he might face for his violation, he stopped reporting to the program and did not appear in court. Presentence Investigation Face Sheet, Ind. No. 3751-2017 (hereinafter, “PSI 3751-2017”) at 4; *see* PSI 1467-2014 at 6. Ultimately he was charged with bail jumping in the first degree, Penal Law § 215.57, under Ind. No. 3751-2017, and a short time later was arrested for criminal possession of a controlled substance of a third degree (forming the basis for the charges under Ind. No. 2159-2016).

Mr. Robinson was sentenced on both his convictions for the drug charges as well as his bail jumping conviction on Mar. 13, 2018. The District Attorney recommended that Mr. Robinson be sentenced to four

years in prison with three years' post-release supervision on each drug count, concurrent with two-to-four years in prison on the bail jumping count. The court noted that it was not bound by the District Attorney's recommendation, stating "I can give him whatever I want," and remarking that Mr. Robinson's failure to meet his conditions was "egregious" and "appalling." P. 3, 9-10. The court further believed that Mr. Robinson had "made a mockery of the Judicial Diversion program," stating that Mr. Robinson was a "career criminal." *Id.* Departing from the prosecution's recommendation, the court imposed a sentence of six years in prison with three years of post-release supervision on the drug counts concurrent with a two-to-four year sentence on the bail jumping, for an aggregate sentence of six years' imprisonment and three years' post-release supervision S. 10-11.

ARGUMENT

TYRONE ROBINSON'S SENTENCE WAS UNDULY HARSH AND EXCESSIVE GIVEN HIS HISTORY OF DRUG ADDICTION AND PROSPECTS FOR SUCCESS IN TREATMENT, AND WHERE IT EXCEEDED THE DISTRICT ATTORNEY'S RECOMMENDATION BY TWO YEARS.

Mr. Robinson has struggled with drug addiction for over 30 years.

Mr. Robinson nearly completed all of his mandated drug treatment programs, demonstrating his potential to eliminate the cause of his other criminal activities, including the new charges he acquired while these drug charges were pending, in support of his drug addiction. Given this history, the prosecution's recommendation of four years was eminently appropriate. The court should have followed this recommendation, and the six years imposed by the sentencing court is unduly harsh and excessive, and should be reduced by this Court in the interest of justice.

This Court has "broad, plenary power to modify a sentence that is unduly harsh or severe under the circumstances . . . without deference to the sentencing court." *People v. Delgado*, 80 N.Y.2d 780, 783 (1992). The Court should consider "the nature of the crime, the defendant's circumstances, the need for societal protection, and the prospects for the defendant's rehabilitation." *People v. Fernandez*, 84 A.D.3d 661, 664 (1st

Dep't 2011) (internal quotation omitted). The Court should also consider these factors with a view toward imposing the “minimum amount of confinement” necessary. *People v. Notey*, 72 A.D.2d 279, 282-83 (2d Dep't 1980) (internal citation omitted).

Mr. Robinson has struggled with drug addiction throughout his adult life. PSI 1467-2014 at 6. As addiction is more appropriately viewed as a chronic illness, not a moral failing, people like Mr. Robinson are not rationally deterred from drug-related offending by the threat of incarceration. Juleyka Lantigua-Williams, “Declaring Addiction a Health Crisis Could Change Criminal Justice,” *Atlantic*, May 26, 2016.² For this reason, “[h]ealth professionals and recovery experts . . . agree that the criminal-justice system is not the place to treat addiction.” *Id.*

Indeed, it is now widely recognized that harsh punitive sentences are ineffective vehicles for addressing drug addiction and the criminal behavior that often arises from it. In 2018, the Pew Research Center analyzed data from all 50 states and found “no relationship between drug imprisonment rates and states’ drug problems.” Pew Charitable Trusts,

² Available at <https://www.theatlantic.com/politics/archive/2016/11/addiction-health-crisis-criminal-justice/508409/>

More Imprisonment Does Not Reduce State Drug Problems, at 5 (March 2018).³ The report concluded that “deterrence – conveying the message that losing one’s freedom is not worth whatever gains from committing a crime” is ineffective in addressing drug-related problems as compared to alternative sentencing, and drug addiction treatment and prevention programs. *Id.* See also Doug McVay, et al., *Treatment or Incarceration? National and State Findings on the Efficacy and Cost Savings of Drug Treatment Versus Imprisonment*, Justice Policy Institute, at 18 (2004)⁴ (finding that punitive sentences “[do] little to reduce the cluster of issues which will see [drug addicts] cycle in and out of the nation’s corrections system. What is needed is a solution less costly than building more prisons and more effective at reducing recidivism.”). Other researchers have found that “longer sentences do not have appreciably greater deterrent effects,” and most sentences could be cut “by half ... without significantly undermining deterrence or increasing the threat of repeat

³ Available at http://www.pewtrusts.org/-/media/assets/2018/03/pspp_more_imprisonment_does_not_reduce_state_drug_problems.pdf

⁴ Available at http://www.justicepolicy.org/uploads/justicepolicy/documents/04-01_rep_mdtreatmentorincarceration_ac-dp.pdf

offending.” Marc Mauer & David Cole, “How to Lock Up Fewer People”, N.Y. Times, May 23, 2015.⁵

Thus, the fact that a drug-addicted defendant may have many past offenses, such as drug sales or thefts, does not reflect incorrigibility or wanton disregard for the law. Especially for those drug habits that are the most expensive to support, such as crack and heroin, it reflects the fact that a person must continuously resort to increasingly desperate means to cope with the debilitating effects that drug addiction causes. A 2015 study found that for addicts, “a great deal of crime is fundamentally driven by substance dependence/addiction – the physical and psychological need for the illicit substance in question.” Michael S. Caudy, et al, *Does Substance Misuse Moderate the Relationship Between Criminal Thinking and Recidivism?*, 43 J. Crim. Just. 1, 12–19, at 13 (2015). “Dependence-driven crime can include the possession of illegal substances, as well any crime committed to obtain resources necessary to obtain drugs.” *Id.* This study found that as severity of substance abuse disorder increased, the relationship between an individual’s tendency

⁵ Available at <https://www.nytimes.com/2015/05/24/opinion/sunday/how-to-lock-up-fewer-people.html>

toward criminal thought patterns (irrespective of drug abuse) and recidivism actually weakened. *Id.* at 17. In other words, in terms of predicting recidivism, the more severe the addiction, the less a person's character affects their likelihood to engage in criminal activity. This suggests that among addicts, "the need for the substances" – and not their personal character – "is the fundamental motivation for most criminal activity." *Id.* at 13. *See also* Trevor Bennett, et al., *The Statistical Association Between Drug Misuse and Crime: A Meta-Analysis*, 13 *Aggression & Violent Behavior* 2, 107–118, at 117 (2008) (finding support in meta-analysis of 30 studies demonstrating that abuse of most expensive drugs like crack, heroin, and cocaine leads to commission of income-generating crimes). Although addiction cannot excuse a person's offenses, it mitigates the culpability associated with offenses resulting from conduct associated with drug-seeking behavior, because it is yet another symptom of a debilitating illness.

New York courts, in recognition of the fact that drug addiction mitigates culpability, have repeatedly reduced sentences for those whose crimes reflect compulsive drug-seeking behavior. *See, e.g., People v. Walsh*, 101 A.D.3d 614, 614 (1st Dep't 2012) (reducing a sentence for

burglary where prior offenses were due to “drug and alcohol abuse”); *People v. Cowell*, 170 A.D.2d 343, 343-44 (1st Dep’t 1991) (reducing sentence for drug sale in spite of past “larceny or drug-related” convictions given that the drug sales were to support a drug habit); *People v. Maryea*, 157 A.D.2d 605, 606 (1st Dep’t 1990) (reducing sentence for robbery despite a history of larceny in support of drug habit); *People v. Kordish*, 140 A.D.3d 981, 981-984 (2d Dep’t 2016) (reducing sentence where a drug offense was committed to support a drug addiction for a person on probation for the same offense); *People v. Nealon*, 36 A.D.3d 1076, 1077, 1079 (3d Dep’t 2007) (reducing sentence in drug case in view of the history of addiction and mental illness). Courts have reduced sentences for such defendants even where their criminal histories have been “extensive.” *See Walsh*, 101 A.D.3d 614; *Nealon*, 36 A.D.3d at 1077; *see also Cowell*, 170 A.D.2d at 343-44 (reducing sentencing even while noting defendant’s numerous drug and larceny convictions).

Mr. Robinson faced a minimum of two years in prison because his third-degree robbery conviction rendered him a predicate violent felon. *See Penal Law § 70.70*. However, the District Attorney, in view of the circumstances surrounding Mr. Robinson’s failure to meet the conditions

of his plea arrangement, recommended only four years in prison, or two years above the minimum, to run concurrently on each count. S. 9. However, the court added an additional two years of prison time in its sentences on the drug charges. S. 10-11. This was inappropriate, given that Mr. Robinson's violations of the plea conditions all resulted from addiction – especially because he demonstrated promise in treatment.

Mr. Robinson had smoked crack-cocaine daily since he was 17, an obvious marker that his addiction is severe. PSI 1467-2014 at 6. Despite this, he attended the programs as mandated and completed the Daytop Village program, and came close to graduating from the Project Create program. PSI 1467-2014 at 6. The court acknowledged that Mr. Robinson ultimately managed to stay clean for most of this time despite “a few relapses.” P. 10. Although he failed a drug test just prior to graduation, this lapse was not due to deficient character, but rather a reflection of how difficult it is for longtime addicts to stay clean for an extended period of time. Mr. Robinson's performance in coming very close to completion of the mandated drug treatment programs shows that he is capable of successfully treating his illness. Because of his mitigated culpability, and demonstrated potential for reform, this lapse alone cannot support the

lengthier sentence of imprisonment that the court imposed above the District Attorney's recommendation.

Mr. Robinson also violated the conditions of his plea arrangement by committing a new offense of bail jumping, and getting arrested again. Together with Mr. Robinson's past record of offenses, the court stated that Mr. Robinson had "made a mockery" of the diversion program and that he was a "career criminal." P. 9-10. This was not true.

Mr. Robinson earnestly participated in drug treatment and got very close to entirely fulfilling his obligations. Because he was scared of the punishment that he would receive, he did not report to the program, and did not appear in court as required. PSI 1467-2014 at 6; PSI 3751-2017 at 4. Mr. Robinson should have appeared in court as mandated and some additional punishment is appropriate, however, he received ample punishment when he was sentenced to two to four years on the bail jumping charge. Thus, Mr. Robinson's bail-jumping offense could not support the court's departure from the four-year recommendation.

His arrest for criminal possession of a controlled substance in the third degree, in violation of his plea arrangement, also did not support an additional two years in prison. Like Mr. Robinson's other past

convictions, including eleven drug possession or sale offenses, and 10 crimes of theft, this arrest did not reflect a “mockery” of the system or disregard for the law, as the court claimed. P. 9. It fit into a clear pattern of drug possession and income-generating crimes done in support of his drug habit – a drug habit that Mr. Robinson has shown that he has the potential to ameliorate with further treatment.

In sum, the District Attorney’s recommendation was appropriate. While a term of imprisonment was appropriate given Mr. Robinson’s failure to meet the conditions, even one above the minimum given the seriousness of his subsequent arrests, he showed real promise in treating his addiction, the source of his offending behavior. For that reason, four years in prison was the “minimum amount of confinement necessary,” *Notey*, 72 A.D.2d at 282-83, in view of “the nature of the crime, the defendant’s circumstances...and the prospects for the defendant’s rehabilitation.” *Fernandez*, 84 A.D.3d at 664. This Court should modify his sentence accordingly.

CONCLUSION

In view of Mr. Robinson's longtime drug addiction, and his potential for successful treatment, this Court should modify Mr. Robinson's sentences to that recommended by the District Attorney: four years in prison with three years of post-release supervision on each drug charge, to run concurrently with the bail-jumping sentence.

Dated: New York, New York
Dec. 23, 2019

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ADDENDA

Supreme Court of the State of New York
Appellate Division: First Department

The People of the State of New York,
Respondent,

— against —

Tyrone Robinson,
Defendant-Appellant.

Ind. No. 1467-2014
& 3751-2017

Statement Pursuant to Rule 5531

1. The indictment numbers in the court below were 1467-2014 & 3751-2017.
2. The full names of the original parties were “The People of the State of New York” against “Tyrone Robinson.”
3. These actions were commenced in Supreme Court, New York County.
4. These actions were commenced by the filing of indictments.
5. This is an appeal from judgments rendered on Mar. 13, 2018, by Supreme Court, New York County. Tyrone Robinson was convicted, after guilty pleas, of one count of criminal possession of a controlled substance in the third degree, N.Y. Penal Law § 220.16(1), and one count of criminal sale of a controlled substance in the third degree, N.Y. Penal Law § 220.39(1), under Ind. No. 1467-2014, and one count of bail jumping in the first degree, N.Y. Penal Law § 215.57, under Ind. No. 3751-2017. Mr. Robinson was sentenced to six years in prison with three years’ post-release supervision on each of the controlled substance counts, and two to four years in prison on the bail jumping count, all to run concurrently. Justice Richard Weinberg presided over the guilty plea under Ind. No. 1467-2014, and Justice Patricia Nunez presided over the guilty plea under Ind. No. 3751-2017, and sentencing. Timely notices of appeal were filed. No stay of execution has been sought. Mr. Robinson is currently serving his term of imprisonment.

6. Mr. Robinson has been granted leave to appeal as a poor person on the original record and typewritten briefs.

Supreme Court of the State of New York
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The People of the State of New York,
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— against —

Tyrone Robinson,
Defendant-Appellant.

Ind. No. 1467-2014
& 3751-2017

Printing Specification Statement

1. The following statement is made in accordance with First Department Rule 600.10.
2. Mr. Robinson's brief was prepared with Microsoft Word 2010 with Century Schoolbook typeface 14 point in the body and 12 point in the footnotes.
3. The text of the brief has a word count of 2,376, as calculated by the processing system and is 14 pages.

