

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND,

VS.

Case Number :
108266016

DEMETRIUS D. SMITH,

DEFENDANT.

_____ /

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
(Motion's Hearing)

Baltimore, Maryland

Friday, July 28, 2017

BEFORE:

HONORABLE BARRY G. WILLIAMS, Associate Judge

APPEARANCES:

For the State:

RICHARD GIBSON, ESQUIRE

For the Defendant:

ADAM BRASKICH, ESQUIRE

* Proceedings digitally recorded *

Transcribed by:
PATRICIA A. TRIKERIOTIS, CVR
Chief Court Reporter
111 N. Calvert Street
Suite 515, Courthouse East
Baltimore, Maryland 21202

T A B L E O F C O N T E N T S

	P a g e
Defendant's Motion for Modification of Sentence	3
- The Court's Ruling (Denied)	13

1 However, in light of the totalities in this
2 case and the violent nature of the case involved, the
3 State would ask that his --

4 THE COURT: Excuse me one second.

5 MR. GIBSON: I'm sorry, Your Honor.

6 (Brief pause.)

7 THE COURT: All right. Continue.

8 MR. GIBSON: Yes, Your Honor.

9 In light of the facts in the case, despite the
10 fact that we acknowledge that he's done positive things
11 while on probation, we ask that his -- the terms and
12 conditions of his probation not be modified.

13 Thank you.

14 THE COURT: Go ahead. All right. I'll hear
15 from you.

16 MR. BRASKICH: Your Honor, it was nine years
17 ago that Mr. Smith, a man with no history of violence,
18 was charged and later convicted of a murder that we now
19 know he did not commit.

20 And it was because of that wrongful conviction
21 that he did something he otherwise never would have done,
22 which was enter an Alford plea to the unrelated assault
23 charge that is before you now.

24 As the Court will recall, Mr. Smith protested
25 his innocence throughout that plea hearing. And the deal

1 he struck with the State was for a concurrent sentence
2 that he could serve alongside his murder sentence. And
3 he also reserved the right to come back to court to
4 request modification of this sentence in the event he was
5 ever successful in getting his murder conviction
6 overturned.

7 That, in fact, happened when the State's
8 Attorney's Office moved to vacate the conviction after a
9 federal investigation revealed that Mr. Smith was
10 innocent. The federal prosecutors have since indicted
11 both the man contracted to kill and the trigger man who
12 is set to go trial in federal court later this year.

13 Mr. Smith sought modification in the form of
14 reduction to time already served. The State's Attorney's
15 Office in that hearing not only did not object but Mr.
16 Tony Gioia appeared for the State and said, I quote,
17 "I've reviewed the police documents and have some issues
18 about the facts," expressing doubt about the strength of
19 the evidence in this assault case.

20 Now that was before one of two witnesses, a
21 prostitute by the name of Dawn Whitehead swore under oath
22 that she, in fact, had not seen Mr. Smith commit the
23 robbery, but had falsely implicated him in response to
24 threats from detectives.

25 And that bore an eerie similarity to the facts

1 of the murder case, which was investigated by on the same
2 detectives, wherein one of two witnesses against Mr.
3 Smith, again a local prostitute, said that she had been
4 threatened to identify Mr. Smith. And that, in fact, was
5 not the man she had seen at the scene of the crime.

6 Your Honor, we request a sentence modification
7 to probation before judgment and believe that would serve
8 the interest of justice for two reason.

9 The first is the new evidence I've alluded to
10 that casts further doubt on what the State itself at one
11 point characterized as a weak evidentiary case against
12 Mr. Smith.

13 And also that I don't think it's an
14 exaggeration to say that Mr. Smith has been a model
15 returning citizen.

16 In the four years since his release, he's had
17 not so much as a traffic ticket.

18 He's been gainfully employed, and has earned
19 the praise of his supervisor as he currently works as a
20 landscaper for a company called Natural Concerns. The
21 president of that company, Mr. Roland Harvey, who is
22 present in the court today. If he could just raise his
23 hand or stand for a moment. But he's here to voice his
24 support for Mr. Smith.

25 And I have just a couple letters that I would

1 like to read into the record very quickly with the
2 Court's permission.

3 THE COURT: Go ahead.

4 MR. BRASKICH: Mr. Harvey writes: "This letter
5 is to serve as a wholehearted endorsement of Demetrius
6 Smith. He's been employed by Natural Concerns, Inc.,
7 since March 22nd, 2017. He's been on time and prepared
8 to work every day and has missed no days without prior
9 notice.

10 "He's earned one raise and is going to receive
11 a second raise yet this season.

12 "He's gained the trust and respect of his
13 peers, as well as supervisors. And shows genuine
14 interest in learning all aspects of our industry.

15 "Our clients have commented on his politeness
16 and work ethic when left unsupervised.

17 "It's our desire that he continues to grow with
18 our company for many years to come."

19 I have a second letter from Mr. Smith's
20 immediate supervisor that I will submit without reading.

21 But I would like to share a letter from a man
22 named Mark Connor (phonetic), who volunteered to serve as
23 Mr. Smith's mentor upon his release and has gotten to
24 know him quite well. And this letter illuminates not
25 only how well Mr. Smith has done, but also the challenges

1 that he's faced because of this felony conviction on his
2 record that he now seeks to remove.

3 He writes: "Dear Judge Williams, I'm writing
4 in earnest support of Demetrius Smith. I first met
5 Demetrius when assigned by a mentoring program to assist
6 him three and a half years ago. Demetrius had recently
7 been released from prison, having spent five years behind
8 bars due to a wrongful murder conviction.

9 "And I've maintained regular contact with
10 Demetrius since then no less frequently monthly and have
11 come to know and admire him quite a bit.

12 "I have worked with more than 100 young men in
13 Baltimore as a mentor and have learned to spot people of
14 promise. Demetrius is one of those people.

15 "He's above all else a motivated worker,
16 diligent at any job, reliably punctual, and always
17 prepared for work.

18 "I find all of this remarkable given the
19 reasons he's been handed for giving up. I've never seen
20 him give up nor have I seen him carry a grudge. And this
21 last ability is truly remarkable, given his wrongful
22 conviction and resulting five-year sentence.

23 "Though his past, including his felony assault
24 charges, both challenges for him since his exoneration,
25 he's undaunted. The instances when Demetrius has told me

1 he was rejected for a job because of the remaining
2 assault charge have been numerous. And he's told me this
3 is the one remaining obstacle to better employment. In
4 my opinion, that has caused to be passed over when, in
5 fact, he'd be a very good hire.

6 "As examples, Mr. Smith has been offered jobs
7 on three different occasions, only to have the job offers
8 rescinded after standard backgrounds show this felony
9 conviction. This included a foreman job at Humanim, an
10 environmental tech at Union Memorial Hospital, and a
11 construction position at a company called Blueprint
12 Robotics.

13 "He's been unable to even enter into an
14 apartment lease because of the assault charge.

15 "And more positively, one of the most
16 impressive things about Demetrius is his strong will and
17 his success in resisting the temptations of the street.

18 "We were once eating lunch while parked near
19 North Avenue before driving him to an interview" --

20 THE COURT: Thank you, Counsel.

21 All right. State, what is your basis for
22 saying no? You acknowledge that the underlying -- the
23 initial conviction, not the assault, but the murder, has
24 been dealt with in a different way, that he was
25 exonerated; is that correct?

1 MR. GIBSON: The State acknowledges that --
2 that after the case was tried, and the defendant was
3 convicted of murder, and after the -- the Court of
4 Appeals affirmed that conviction, my office, after
5 discussions with federal authorities, chose to vacate
6 that conviction to allow the federal prosecution to go
7 forward the way they envisioned it.

8 THE COURT: Of the murder?

9 MR. GIBSON: Of a conspiracy to commit the
10 murder.

11 THE COURT: So you're stating in open court
12 that your office isn't saying that he wasn't guilty. You
13 just did it for other reasons?

14 MR. GIBSON: I'm saying in open court that I
15 was shown information that -- I was personally
16 information that they had. And the information that the
17 federal authorities had --

18 THE COURT: Well, let me ask you, why did the
19 State's Attorney's Office move to vacate the murder
20 charge, the murder conviction, against this defendant?

21 MR. GIBSON: They had information that -- that
22 another individual --

23 THE COURT: Well no, Counsel, it's a simple
24 question. Why did your office move to vacate the murder
25 conviction against this defendant?

1 MR. GIBSON: That was a decision that was made
2 above my purview, Your Honor.

3 THE COURT: So then what you're saying is you
4 don't really have any power or control about what you're
5 saying?

6 MR. GIBSON: I don't have any control -- I have
7 no control over the decision that that office -- that my
8 office made in relation to the murder.

9 THE COURT: So are you sitting here saying that
10 he's still guilty of the murder? Because that would be a
11 basis to -- for me not to do anything in this case.

12 But if you're saying that he is not guilty of
13 the murder, and the reason that the plea was taken was to
14 run it concurrent to that -- what are you saying?

15 MR. GIBSON: So I am saying that my office took
16 a position on the murder in light of discussions with
17 federal authorities. I have no ability to affect that
18 decision. The State's position --

19 THE COURT: But you haven't -- an ability to
20 affect this case --

21 MR. GIBSON: Yes.

22 THE COURT: -- which is connected to the other
23 case?

24 MR. GIBSON: The -- so --

25 THE COURT: So maybe you need to bring a

1 supervisor in since you're not sure?

2 Well, it's clear something's not going right.

3 MR. GIBSON: No, no, Your Honor.

4 THE COURT: Yes, yes, Counsel.

5 MR. GIBSON: Here's what I'm saying, Your
6 Honor. In terms of this case, the defendant, when he was
7 accused of the murder, had a bail review for the murder
8 case. He was given bail for the murder case.

9 While out on bail for the murder case, this
10 case occurred in a separate shooting of an individual
11 named Mr. Hendricks, if I recall correctly.

12 THE COURT: Mmm-hmm.

13 MR. GIBSON: (Indiscernible at 10:18:16)
14 Hendricks.

15 That incident -- in that incident, Mr.
16 Hendricks identified the defendant as the person who shot
17 him. And another individual named Dawn Whitehead, who
18 has --

19 THE COURT: Well, obviously there are issues
20 with -- there are allegations of issues both with the
21 murder, obviously, and then the assault case that we have
22 here. We're not here to retry it.

23 I guess I don't understand the position that
24 the State is in. The sentence was served. There was an
25 Alford Plea.

1 But here's the thing, if that's the position
2 that the State is in, if that's where you find yourself,
3 you're absolutely right. It was a binding plea. And the
4 State's position is a man who's done all these things
5 doesn't deserve another chance. And I have no control.
6 So is that the State's position?

7 MR. GIBSON: Respectfully, yes, Your Honor.

8 THE COURT: It's not respectfully, Counsel.
9 It's -- if that's your position --

10 MR. GIBSON: Yes, yes, yes, Your Honor. Yes.

11 THE COURT: Very well.

12 I have not authority, as you know or are well
13 aware, Counsel. It's a binding ABA plea, despite what I
14 would -- may or may not want to do --

15 MR. BRASKICH: Your Honor --

16 THE COURT: -- it's irrelevant.

17 Motion is denied. Thank you.

18 THE COURT: And it's the State's position.

19 MR. BRASKICH: Your Honor, if I --

20 THE COURT: Thank you.

21 MR. GIBSON: Thank you, Your Honor.

22 May I be excused?

23 THE COURT: You may.

24 MR. GIBSON: Thank you.

25 (Whereupon, the matter concluded at 10:19 p.m.)

REPORTER'S CERTIFICATE

I, Patricia A. Trikeriotis, Chief Court Reporter of the Circuit Court for Baltimore City, do hereby certify that the proceedings in the matter of State of Maryland vs. Demetrius D. Smith, Case Number 108266016, on July 28, 2017, before the Honorable Barry G. Williams, Administrative Judge, were duly recorded by means of digital recording.

I further certify that the page numbers 1 through 13 constitute the official transcript of excerpts of these proceedings as transcribed by me or under my direction from the digital recording to the within typewritten matter in a complete and accurate manner.

In Witness Whereof, I have affixed my signature this 8th day of August, 2017.

Patricia A. Trikeriotis
Chief Court Reporter