

Transcript of Proceedings in the captioned matter held in Albany County Supreme Court, Albany County Judicial Center, 6 Lodge Street, Albany, New York, on March 27, 2020.

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

PEOPLE OF THE STATE OF NEW YORK

vs.

IND/SCI No: 19-231
INDEX No: DA 535-19

ELITE TERRELL

Order to Show Cause

Defendant(s)

RESENTENCING

Presiding: HON. PETER A. LYNCH
Supreme Court Justice

Court Reporter: ERIC J. TYLER | Senior Court Reporter

A P P E A R A N C E S:

For the People: BRYANNE PERLANSKI, ESQ.
Present by Skype Albany County District Attorney's Office
6 Lodge Street
Albany, New York 12207

For the Defendant: BEAU A. MELITA, ESQ.
Present by Skype Albany County Public Defender's Office
60 South Pearl Street - Suite 4
Albany, New York 12207

ELITE TERRELL, present by Skype.

ERIC J. TYLER

Senior Court Reporter

**People v. Elite Terrell 19-231
Order to Show Cause - Resentence**

1 THE COURT: Are you Elite Terrell.

2 ELITE TERRELL: I am. Good morning.

3 THE COURT: I'm waiting for your attorney
4 Beau Melita to join this Skype conference.

5 THE COURT: Good morning, Beau. Okay, as
6 you can see Elite is here. Counsel, do you want to
7 put your respective appearances on the record.

8 MS. PERLANSKI: Bryanne Perlanski for the
9 People.

10 MR. MELITA: Beau Melita on behalf of the
11 Albany County Public Defender and Mr. Terrell.

12 THE COURT: In paragraph four of your
13 affirmation you allege the defendant was sentenced to
14 a four month definite sentence, together with ten
15 years probation, for an underlying conviction of
16 attempted criminal sex act in the second degree. You
17 don't --

18 MR. MELITA: That's correct.

19 THE COURT: Who was the Judge on that case?

20 MR. MELITA: It was Judge Carter, initially,
21 I believe sentencing -- if it was not Judge Carter,
22 it was Judge Breslin who was the sentencing Judge,
23 but Judge Carter took the plea.

24 THE COURT: Carter took the plea and Breslin
25 did the sentence?

ERIC J. TYLER

Senior Court Reporter

People v. Elite Terrell 19-231
Order to Show Cause - Resentence

1 MR. MELITA: I'm not sure who did the
2 sentence. If my memory serves me right it was Judge
3 Carter who sentenced as well.

4 THE COURT: Bryanne, do you know?

5 MS. PERLANSKI: I don't know which Judge
6 did the sentencing.

7 THE COURT: In any event it was a Judge that
8 was not me, can we agree on that?

9 MR. MELITA: Correct.

10 THE COURT: Now, you are seeking to
11 essentially either suspend or eliminate the definite
12 sentence component, based on the COVID-19 outbreak,
13 true?

14 MR. MELITA: That's correct.

15 THE COURT: Okay. And you know, the
16 fundamental issue is the restrictions under § 430.10
17 of the Criminal Procedure Law, which specifically
18 states that a sentence, quote, may not be changed,
19 suspended or interrupted once the term or period of
20 the sentence has commenced.

21 Of course, the question also boils down to
22 whether or not the Court has the inherent authority
23 to re-enter the case under § 2-b (3) of the Judiciary
24 Law, and to be blunt, under the matter of Fludd v.
25 Goldberg, 51 Appellate Division Third 153, Page 157,

ERIC J. TYLER

Senior Court Reporter

People v. Elite Terrell 19-231
Order to Show Cause - Resentence

1 the Court makes it very clear that a trial court
2 cannot invoke inherent authority to re-enter a case
3 post sentencing.

4 Now, can you tell me, in light of the
5 restrictions of § 430.10 of the Criminal Procedure
6 Law and the limitations on the exercise of inherent
7 authority under the Judiciary Law, what your basis
8 would be, absent consent from the People, to relieve
9 your client of his obligation to serve his four month
10 definite sentence?

11 MR. MELITA: Yes, Your Honor. Well, first,
12 we are dealing with some extraordinary circumstances
13 right now that are really unprecedented in the recent
14 past.

15 We assert that there are two different basis
16 upon which the Court could re-sentence Mr. Terrell to
17 time served. He owes less than a week on his
18 sentence at this point, but that might be -- it's a
19 lot of time in COVID-19 time.

20 THE COURT: Have you talked to the district
21 attorney about whether or not you can come to a
22 meeting of the minds with a joint application, which
23 would make this fairly simple.

24 MR. MELITA: I have, Your Honor. I
25 submitted a lengthy letter to David Rossi of the

ERIC J. TYLER

Senior Court Reporter

**People v. Elite Terrell 19-231
Order to Show Cause - Resentence**

1 Albany County District Attorney's office and
2 unfortunately they have indicated that, despite the
3 fact that he owes such a minuscule amount of time on
4 his sentence, they are not willing to consent to his
5 early release.

6 THE COURT: I thought this was Caroline
7 Murray's case?

8 MR. MELITA: That's correct.

9 THE COURT: Why did you write a letter to
10 Rossi if it's Caroline Murray?

11 MR. MELITA: It was sent to Caroline Murray
12 as well. I was instructed by my superiors to draft a
13 letter to David Rossi because, apparently, he was
14 taking some of these request.

15 THE COURT: Okay.

16 MR. MELITA: To return to my argument. We
17 assert there's two separate independently sufficient
18 basis by which the Court could re-sentence
19 Mr. Terrell.

20 First, at this point, the sentence is no
21 longer in accord with the plea agreement that he
22 agreed to, given that there are new, unforeseen
23 stipulations or conditions of the sentence that he
24 was not aware of at the time of the plea and did not
25 agree to.

ERIC J. TYLER

Senior Court Reporter

People v. Elite Terrell 19-231
Order to Show Cause - Resentence

1 Most specifically, that he would be housed
2 in a facility, and under circumstances, which creates
3 an extremely high risk of serve health problems,
4 should there be a coronavirus outbreak, if there has
5 not been one already that we're not aware of.

6 It's a confined space, people are very
7 close. There's been a lot of writing by doctors and
8 in the media about how dangerous the jails are right
9 now, and prisons, so those are not conditions that he
10 agreed to at the time of the sentence, which I
11 believe undermines his entering into that sentence.

12 The second basis that we cite is that we
13 assert that continued incarceration at this point
14 constitutes a cruel and unusual punishment, which is
15 against the prohibition under the Eighth Amendment.
16 My papers, I do reference some case law that
17 indicates that cruel and unusual punishment is a
18 flexible concept, and that even circumstances of
19 confinement, short of torture, can be considered
20 cruel and unusual.

21 And a cruel and unusual sentence is one that
22 is patently illegal, which we assert just like our
23 first basis, avoids the bar for re-sentencing under
24 § 430.10. So, those are our basis, Your Honor.
25 There's additional information in my paperwork, but

ERIC J. TYLER

Senior Court Reporter

**People v. Elite Terrell 19-231
Order to Show Cause - Resentence**

1 our position is that the Court does have the
2 authority to do this and that it is really the only
3 just and proper decision at this time. Thank you.

4 THE COURT: So, Beau, your client has
5 approximately seven days to go before he would
6 otherwise satisfy the definite sentence?

7 MR. MELITA: Yes. I believe his release
8 date is actually six days from now.

9 THE COURT: Okay. Ms. Perlanski?

10 MS. PERLANSKI: Thank you, Judge. The
11 People are opposing modifying the defendant's
12 sentence --

13 THE COURT: Why? Because Rossi said so?

14 MS. PERLANSKI: Well, Judge, he has been
15 instrumental in making determinations as to what
16 cases we are consenting to and which cases we are
17 not. This is an attempted criminal sex act in second
18 degree offense.

19 THE COURT: All right, let's start off with
20 basics, okay. In level of degree of severity, the
21 sentence itself, a four months definite sentence with
22 10 years probation, would be an indicator that this
23 is not a high profile case.

24 This was a disposition that clearly called
25 for an opportunity for the defendant to serve a

ERIC J. TYLER

Senior Court Reporter

People v. Elite Terrell 19-231
Order to Show Cause - Resentence

1 sentence in a safe setting, together with a period of
2 probation.

3 What would be the purpose of an additional
4 six days, in that context, that would serve the
5 interest of justice?

6 MS. PERLANSKI: Well, Judge, the victim in
7 this case, I think, would be opposed and --

8 THE COURT: How do you know that?

9 MS. PERLANSKI: Well, I did speak with
10 Caroline Murray, who has been in contact with the
11 victim, and --

12 THE COURT: Is there an order of protection?

13 MS. PERLANSKI: There is an order of
14 protection. You know, I think the victim, I don't
15 know, was hoping for more than what his sentence was
16 initially on this matter, but it's my understanding
17 that we're seeking to have him serve the full four
18 months.

19 THE COURT: What about the case, Court of
20 Appeals, People v. Dunn, 4 NY3d 495, where the trial
21 Court, recognizing that the defendant's counsel
22 failed to provide meaningful counsel, vacated the
23 verdict, under its authority, under Judiciary Law
24 § 2-b (3). When the Court sees something that is
25 inherently wrong, what about that?

ERIC J. TYLER

Senior Court Reporter

People v. Elite Terrell 19-231
Order to Show Cause - Resentence

1 MS. PERLANSKI: So, Judge, I don't believe
2 that him serving his full sentence would be
3 inherently wrong at this point.

4 THE COURT: Would it be inherently right?

5 MS. PERLANSKI: I think that it is right
6 for him to serve his full sentence. The Sheriff has
7 spoken with our office and detailed what steps they
8 are taking ensuring the safety of inmates within the
9 jail.

10 As stated on the record earlier, upon entry
11 to the jail, everyone, including defendants, staff
12 and deputies are being cleared by medical. This
13 means checking them for signs and symptoms of the
14 virus, taking everyone's temperature. If an inmate
15 exhibits any signs or symptoms, they are placed in a
16 separate quarantine area of the jail, including
17 Plexiglas over the jail doors to reduce further
18 exposure. Inmates are being housed one inmate per
19 cell. They're allowed to leave their cells during
20 the day, if they so choose, but it's not advised.

21 I believe their meals are being delivered to
22 their cells, their daily social activities are being
23 suspended, hand sanitizer is being placed on every
24 tier, available upon request. Daily cleaning, or
25 there are daily cleaning and sanitation efforts.

ERIC J. TYLER

Senior Court Reporter

People v. Elite Terrell 19-231
Order to Show Cause - Resentence

1 So, I do understand we're in unique
2 circumstances, however, I don't believe that unique
3 circumstances should lead to everyone being released
4 from the jail.

5 THE COURT: Everyone is not scheduled to be
6 released in six days. Elite Terrell, how old are
7 you?

8 ELITE TERRELL: I turned 29 on Monday,
9 Sir.

10 THE COURT: What's your date of birth?

11 ELITE TERRELL: March 23, '91.

12 THE COURT: Where did you grow up?

13 ELITE TERRELL: Live in Albany, New York.

14 THE COURT: Where do you live?

15 ELITE TERRELL: I live at 470 Ontario
16 Street, but I'll be housed at 54 Southern Boulevard
17 with my brother Jason Terrell.

18 THE COURT: Beau, you want to say something
19 else?

20 MR. MELITA: Yeah, the proposition that the
21 jail is safe environment, it's an absurd one. They
22 have taken a bunch of precautions there, but to come
23 out and say that the jail is fine and it is safe for
24 everybody, it is just disingenuous.

25 I'll quote the Sheriff himself; if someone

ERIC J. TYLER

Senior Court Reporter

People v. Elite Terrell 19-231
Order to Show Cause - Resentence

1 gets sick in my jail, we're in a lot of trouble. I
2 think that is all that really needs to be said on
3 that point. There's a wealth of information, medical
4 information, commentary, that's out there right now
5 that talks about how jails are not safe.

6 And you can take all the precautions you
7 want, but the fact of the matter is, the
8 circumstances are such that it just -- it's a death
9 trap, potentially, if people start getting sick at
10 the jail.

11 THE COURT: Are you suggesting that everyone
12 at the jail should be released or are you asserting
13 your client's circumstances are unique?

14 MR. MELITA: I'm asserting that my client's
15 circumstances are unique, Your Honor, and we're not
16 asking -- my office is not going to be asking that
17 everyone be released. We're going through and
18 identifying cases that, like this one, are special
19 and unique circumstances under the pandemic that
20 we're all experiencing.

21 THE COURT: Okay. I understand
22 Ms. Perlanski is the assigned duty person here today,
23 and I understand that she probably is following the
24 direction of her office, but I think that the
25 position that has taken, emanating from Mr. Rossi, is

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Senior Court Reporter

People v. Elite Terrell 19-231
Order to Show Cause - Resentence

1 a clear and blatant example of a one dimensional view
2 of the purposes of sentencing.

3 Under Judiciary Law § 2-b (3) and under the
4 extreme, unique circumstances of the COVID-19
5 outbreak, and in light of the fact that the defendant
6 would otherwise be released in six days, there is no
7 legitimate purpose, in my view, to deny this
8 application, so I am going to exercise my discretion
9 under the Judiciary Law.

10 I'm vacating the four month definite
11 sentence, re-sentencing the defendant to time served
12 effective immediately, together with the
13 corresponding concurrent ten years period of
14 probation, which remains in full force and effect.

15 I'll sign a release order and that concludes
16 the proceedings.

17 MS. PERLANSKI: Judge, I believe that
18 there's an issue of a SORA.

19 THE COURT: You all can get together with
20 Mr. Melita and you can contact the Judge, the
21 original Judge on this case, and you can reschedule
22 the SORA. It is not a situation where he is in
23 immediacy of, in corrections for example, where his
24 release would be held up if he did not have the SORA,
25 so you all can get together and get the SORA

ERIC J. TYLER

Senior Court Reporter

**People v. Elite Terrell 19-231
Order to Show Cause - Resentence**

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reschedule on your own. That's it.

MR. MELITA: Thank you, Your Honor.

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CERTIFICATION:

Certified true and accurate transcript

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