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Young Man's Felony Indictment Tossed in Interest of Justice

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A state judge has dismissed a felony conviction against a young man with severe mental health and drug problems who stood a good chance of going to prison.

Manhattan Acting Supreme Court Justice Thomas Farber said he found "compelling" reasons in *People v. Brian M.*, Ind. No. 1597/13, to circumvent the strict letter of the law in the interest of justice. Thus, he took the unusual step of granting a Clayton motion pursuant to CPL §240.10.

In doing so, the judge observed that defense counsel Victor Castelli of the Legal Aid Society and Angel Rodriguez, director of the Andrew Glover Youth Program, had "a difficult, almost impossible job."

Farber said that they needed to convince the court and the district attorney to give the defendant "a second (or, depending how you look at it, a third or fourth) chance at rehabilitation." Moreover, they needed to convince their client that he had "to undergo a complete life transformation."

The judge said that Brian's situation was "bleak" two years ago. Now, however, he wrote he has completed therapeutic programs, has enrolled in college, is employed full-time, remains drug free and "has a handle" on his mental health and substance abuse issues.

"It is a wonderful and remarkable thing to see. He is like Lazarus who has returned from the dead," Castelli said of his client.

Rodriguez said the judge gave Brian "a second chance, and he worked for it, and he earned it. His success is helpful to other kids."

Brian was 19 when he was arrested for selling crack cocaine to an undercover police officer in April 2013. Only 20 days before that arrest, Brian had been sentenced to a conditional discharge as a youthful offender on a similar charge. His record also included misdemeanor youthful offender adjudications for theft of services and marijuana convictions, as well as a violation for harassment and difficulty in completing various programs.

When he first appeared before Farber, the judge said he saw "a confused young man with a drug addiction and serious mental health issues."

Castelli and Rodriguez, who had been contacted by Brian's family, told Farber that they saw a lot of promise in him, but the judge observed that the young man "seemed unable to make the type of decisions that had to be made to keep himself out of trouble."

"He was caught up in the community and gang issues, but I knew him prior to his arrest as a good kid," Rodriguez said.

Farber tried to convince Brian to cooperate with the Glover program, which required him to sign a contract requiring him to abide by his curfew, undergo regular drug testing, attend anger management classes, register for college and live at home without problems.

The judge said the young man demonstrated initial progress, but that it became "nearly impossible" for the Glover program to work with him. He said Brian acted up, broke curfew and received a summons for riding his bicycle on the sidewalk.

His mental health deteriorated; he stopped bathing, refused to be drug tested and threatened suicide. When he appeared before Farber in December 2013, the judge said Brian "was staring at the defense table, almost shaking and refused to engage."

In January 2014, the Acacia Network, an organization that offers residential rehabilitation recovery for young men, found a bed for Brian. At the request of Manhattan Assistant District Attorney Jenna Bergamo, he pleaded guilty to criminal possession of a controlled substance in the third degree before entering the program.

Castelli and Rodriguez asked the prosecution to accept a misdemeanor plea if Brian turned his life around. Bergamo said her office would not consider such a "repleader." Farber encouraged the prosecution to keep an open mind, noting that he could dismiss the charge.

According to Farber, Brian had made significant improvement by March 2014. He was participating in all groups and sessions, seeing a psychiatrist biweekly and testing negative for controlled substances. In September 2014, he enrolled full-time in the Borough of Manhattan Community College, re-established his relationship with his family and maintained his sobriety.

When he appeared before Farber in April of this year, he was calm and focused. The prosecution again refused to offer a misdemeanor plea, and the judge dismissed the indictment.

"I cannot see any point in rewarding the defendant [for his success] with a felony conviction," which would have "severe consequences on his ability to support himself," Farber wrote in his July 22 decision.

Moreover, the judge concluded, "dismissing the case would have minimal impact on public confidence in the criminal justice system and the safety or welfare of the community. There is every indication that he can still be and will be a productive citizen."

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