COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

MARESA CHAPMAN,

Defendant.

DECISION AND ORDER
CPL 440.47
Indictment No. 30-7217
Index No. DA 250-15

APPEARANCES:

FOR THE PEOPLE:

HON. P. DAVID SOARES, ESQ.
Albany County District Attorney
Albany County Judicial Center
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Albany, New York 12207

OF COUNSEL:

SHANNON K. CORBITT, ESQ.
Assistant District Attorney

FOR THE DEFENDANT:

KATHY MANLEY, ESQ.
26 Dinmore Road
Selkirk, New York 12158

WILLIAM A. CARTER, J.

Defendant moves pursuant to CPL 440.47, for an order vacating the sentence originally imposed and to be resentenced pursuant to Penal Law § 60.12, on the statutory grounds that: (1) at the time of the commission of the offense she was a victim of domestic violence subjected to substantial physical, sexual and psychological abuse; (2) such abuse was a significant contributing factor to her commission of the offense and (3) the original sentence imposed in this matter is unduly harsh. The People oppose.

Relevant Background and Procedural History

In satisfaction of a six-count indictment, defendant pleaded guilty to attempted assault in the first degree and, on January 25, 2016, was sentenced (Herrick, J.) as a second felony offender to an eight and one-half year determinate term of incarceration, to be followed by five years of

post-release supervision. Defendant's conviction was affirmed on appeal (see People v Chapman, 160 AD3d 1211 [3 Dept 2018]). In September 2019, defendant filed an application to be resentenced in accordance with Penal Law 60.12, pursuant to CPL 440.47. Having found defendant satisfied the initial pleading requirements regarding the term of her sentence and her status as a victim of domestic violence to apply for resentencing (see CPL 440.47 [1][a], [c]), by decision and order issued on September 17, 2019, this court, *inter alia*, appointed counsel for defendant and ordered a hearing to aid the court in making its determination of whether defendant should be resentenced in accordance with Penal Law § 60.12 (see CPL 440.47 [1][c], [e]).

A hearing was held on September 25, 2020, whereat defendant called Dr. Jaqueline Bashkoff, Ph.D. as an expert witness in domestic violence trauma and the People called retired Albany Police Detective James Olsen. Upon consideration of the credible hearing testimony, expert reports and other documents entered in evidence, as well as the oral and written arguments of the parties, pursuant to CPL 440.47 (2)(g), the court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

Initially, the court notes that it credits the entirety of Dr. Bashkoff's testimony and report entered in evidence upon the stipulation of the parties and incorporates all the relevant facts contained therein. Dr. Bashkoff's testimony provided the court with necessary and valuable background into the dynamics of dominance and control inherent in domestic violence and how such victims react to such treatment. Particularly relevant to the instant motion, Dr. Bashkoff detailed an approximate 18-year history of physical, sexual and psychological abuse between defendant and Darrell Chapman (hereinafter D. Chapman) and how that abuse was a significant contributing factor to defendant's assault upon Andrea Wilson.

Defendant is now 35 years old, the mother of three children and has served in excess of five years of her eight and one-half year sentence. By age 17, defendant became involved with D. Chapman, a purported high-ranking member of the Bloods gang, while he was then incarcerated. Defendant became pregnant with D. Chapman's child after having sex in the prison courtyard and thereafter brought D. Chapman contraband in prison. Upon D. Chapman's December 2013 release from prison, he moved in with defendant and thereafter began selling drugs and running a prostitution ring. D. Chapman forced defendant to drive him, her sister, Mariah Hyde, and Andrea Wilson (hereinafter Wilson), in defendant's car to sell drugs. D. Chapman's psychological abuse included the precipitating acts underlying the felony assault – telling defendant Wilson was a lesbian yet having an affair with her and introducing Wilson to defendant's children as his girlfriend and then paying the children to be quiet about the affair. In the spring of 2014, D. Chapman was physically, verbally and psychologically abusing defendant. In June 2014, a domestic violence incident report was filed alleging D. Chapman threatened to kill defendant. Defendant sought assistance from Unity House (Domestic Violence Shelter) on three occasions in the months immediately preceding the felony assault and was staying at the shelter in June and July of 2014.

CONCLUSIONS OF LAW

Legislative History of Penal Law § 60.12 and CPL 440.47

On May 14, 2019, the Domestic Violence Survivors Justice Act (DVSJA) was signed into law, amending Penal Law § 60.12 by authorizing the imposition of alternative sentences for survivors of domestic violence and enacting CPL 440.47, providing a procedure by which these same survivors of domestic violence who are currently serving their sentences may apply to be resentenced. The legislation was born of the realization that "domestic violence and women's incarceration are inextricably linked" and that the state's then-existing sentencing structure did not "allow judges discretion to fully consider the impact of domestic violence when determining sentence lengths...lead[ing] to long, unfair prison sentences for many survivors" (People v Smith, __ Misc3d __, 2020 NY Slip Op. 20240, 2020 WL 5755560 [Erie Co Ct, Sept 2, 2020], citing NY Senate Assemb. Memorandum in Support of Bill A3110 [Jan. 26, 2017]).

Penal Law § 60.12 was thus revised, expanding a court's authority to "impose an alternative, less severe, sentence for a victim of domestic violence who is convicted of certain felonies" (William C. Donnino, 2020 Practice Commentaries, McKinney's Cons Laws of NY; Penal Law § 60.12 [online version]). CPL 440.47 was contemporaneously enacted authorizing a court, in the post-judgment context, to resentence defendants who qualify for an alternative sentence under the revised Penal Law § 60.12 (see id). The legislation and this re-sentencing determination "neither exonerates a defendant nor excuses her criminal conduct. It simply permits a court to impose, or in cases where a defendant already has been sentenced, to reduce a sentence in consideration of that defendant's status as a domestic violence victim" (People v Smith, supra).

A court may impose a Penal Law § 60.12 sentence in lieu of any other sentence upon a defendant convicted of an eligible felony, and who, after a hearing, meets the following three criteria:

(1) at the time of the offense, defendant was subjected to "substantial" physical, sexual or psychological abuse inflicted by a "member of the same family or household" as that phrase is defined by CPL 530.11; and

(2) the abuse was a "significant contributing factor" to defendant's criminal behavior regardless if defendant raised a defense of justification [Penal Law Article. 35]; duress, entrapment, renunciation, or insanity [Penal Law Article 40]; extreme emotional disturbance, or the causing or aiding of suicide [Penal Law § 125.25 (1)]; and

(3) upon consideration of the standard sentencing factors, it "would be unduly harsh" to impose the otherwise applicable sentence of imprisonment.

Here, the court finds that defendant established, by a preponderance of the evidence (see People v Addimando, 67 Misc3d 408, 413–14 [Dutchess Co Ct. 2020]; compare CPL 440.30), that at the time of the 2014 assault, she was a victim of domestic violence and that D. Chapman's

abusive behavior, as detailed above, was a significant contributing factor in the commission of the assault upon Wilson, and that the original sentence imposed in this matter was unduly harsh. Accordingly, the court grants defendant's motion for Penal Law § 60.12 resentencing. Motion granted.

Upon granting defendant's application for resentencing in accordance with Penal Law § 60.12, notice is hereby provided, pursuant to CPL 440.47 (2)(g), that unless the applicant withdraws the application or appeals from such order, the court will enter an order vacating the sentence originally imposed and imposes the following new sentence as authorized by Penal Law § 60.12.

Pursuant to CPL 440.47 (4), "in calculating the new term to be served by the applicant pursuant to Penal Law § 60.12, such applicant shall be credited for any jail time credited towards the subject conviction as well as any period of incarceration credited toward the sentence originally imposed." Defendant is hereby resentenced to a determinate sentence of five years to be followed by five years of post-release supervision.

Any motions not specifically granted herein are hereby denied. This memorandum shall constitute the decision and order of the Court.

Dated: October 2, 2020
Albany, New York

WILLIAM A. CARTER
County Court Judge