

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY CRIMINAL TERM : PART- 95**

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THE PEOPLE OF THE STATE OF NEW YORK,

Indictment No. [REDACTED] 1996

-against-

DECISION AND ORDER

**S [REDACTED] S [REDACTED], ALSO KNOWN AS
C [REDACTED] S [REDACTED],**

Defendant.

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DANIEL P. CONVISER, J.:

The Defendant has moved to be resentenced for her conviction for Murder in the Second Degree under the Domestic Violence Survivors Justice Act. For the reasons outlined here, the motion is granted. The Defendant is offered a new determinate sentence of 15 years incarceration followed by 5 years of post-release supervision with respect to that conviction. Since the Defendant has already served approximately 26 years in prison, the Court understands she will accept the new sentence. The Court will schedule a proceeding at which the previous sentence may be revoked and the new sentence imposed.

The Defendant was convicted on December 1, 1997, after a jury trial in Supreme Court, New York County of Murder in the Second Degree (PL § 125.25 (2)) (depraved indifference murder) and Criminal Possession of a Weapon in the Third Degree (PL § 265.02 (2)). She was acquitted of intentional murder. The Defendant then pled guilty to an additional count of Criminal Possession of a Weapon in the Third Degree (PL § 265.02 (3)). On February 25, 1998, the Defendant was sentenced to an indeterminate prison term of 20 years to life for the count of Murder in the Second Degree, three and one half to seven years for Criminal Possession of a

Weapon in the Third Degree (PL § 265.02 (2)) and two and one third to seven years for her plea to Criminal Possession of a Weapon in the Third Degree (PL § 265.02 (3), all sentences to run concurrently with each other. (Beeler, J., trial and sentence). By motion, dated November 24, 2021, while still incarcerated, the Defendant then moved pursuant to CPL § 440.47 for resentencing in accordance with PL § 60.12, which was revised in 2019 in accordance with the Domestic Violence Survivors Justice Act (the “DVSJA”). The People opposed the motion.

CPL § 440.47 states that “any person confined in an institution...serving a sentence with a minimum or determinate term of eight years or more...may submit...a request to apply for resentencing in accordance with section 60.12 of the penal law.” CPL § 440.47 (1) (a). This Court previously first held that the Defendant had met the requisites for a hearing and then that she and the decedent were “a member of the same family or household” as defined in CPL § 530.11 (1). CPL § 440.47 (2) (c). Ms. S [REDACTED] said she used the name S [REDACTED] S [REDACTED] also known as C [REDACTED] S [REDACTED] and the pronoun “Ms.”. The Defendant had no criminal history prior to the charges and convictions in this case. She is currently 56 years old.

Testimony of Ms. S [REDACTED]

Ms. S [REDACTED] testified at an evidentiary hearing on this motion. She currently resides in Sullivan County New York and prior to serving approximately 26 years in jail and prison lived in Washington Heights in New York County. She moved into an apartment there with the decedent, R [REDACTED] S [REDACTED] v in October of 1995. She said that at the time, she was not doing well psychologically or physically and that her parents thus sought to have her live with someone who could look out for her. They found Mr. S [REDACTED] through family friends. At their initial meeting with Mr. S [REDACTED] v the Defendant and her parents had an uneasy feeling about him. However, Ms. S [REDACTED] had been molested in the neighborhood, subject to burglaries, had

intense anxiety and needed a companion to live with. Mr. S [REDACTED] did not pay rent. Ms. S [REDACTED]'s parents lived in the same building.

The dwelling they lived in was a large one bedroom apartment and initially Ms. S [REDACTED] felt safe living with Mr. S [REDACTED]. The apartment was not very comfortable for two people. Mr. S [REDACTED] spent most of his time in the living room where he slept while Ms. S [REDACTED] spent most of her time in the bedroom where she slept. The two interacted in the kitchen where they sometimes cooked meals, the bedroom, or the living room, where they watched television.

At the time Ms. S [REDACTED] said she was transgender but did not act on that to a great degree. She said she sometimes dressed up or put on makeup but was suffering from significant anxiety and did not go outside the apartment when doing that. She became more comfortable wearing women's clothes once Mr. S [REDACTED] moved in. Ms. S [REDACTED] believed a woman was living inside her. Ms. S [REDACTED] told her parents about her gender identity but they did not fully understand it. Mr. S [REDACTED] saw Ms. S [REDACTED] wearing women's clothes, high heeled shoes and makeup.

Both the Defendant and Mr. S [REDACTED] spoke Russian. Ms. S [REDACTED] recalled a time when she was posing in women's clothes in her room and Mr. S [REDACTED] came in and complimented her. She did not wear women's clothes outside the apartment because she feared being subject to negative attention. Mr. S [REDACTED] in subsequent discussions told Ms. S [REDACTED] that he was attracted to her, that she was beautiful and that they should date. The Defendant wore women's clothing in front of Mr. S [REDACTED] about 3 or 4 times per month. The two did not usually eat together and when at home Mr. S [REDACTED] generally stayed in the living room and watched television. Although Mr. S [REDACTED] asked the Defendant to go on dates, he refused invitations Ms. S [REDACTED] made to him for social outings.

The Defendant talked to Mr. S [REDACTED] about transgenderism and the mental health medications she was taking. She described her goal to be a model. They both discussed their sexual experiences. Mr. S [REDACTED] said he had had sex with many girls, women and men and was very powerful. Ms. S [REDACTED] said Mr. S [REDACTED] appeared to want to show her that he was in charge. He gave the impression that he treated his sexual partners like trash, used sexual partners and forced sex on them. He gave the impression of being completely disrespectful to persons he had sex with and this made Ms. S [REDACTED] very concerned.

Mr. S [REDACTED] raised the possibility of the two having sex and began flirting with Ms. S [REDACTED]. He asked to sit on the bed next to Ms. S [REDACTED], which she permitted. On between 10 or 20 occasions, Mr. S [REDACTED] flirted with Ms. S [REDACTED], told her she was beautiful or asked her on dates. He became more persuasive and angrier. Ms. S [REDACTED] said she rebuffed Mr. S [REDACTED]'s romantic entreaties. Mr. S [REDACTED] was very interested in guns and Ms. S [REDACTED] showed him guns she had, at his request. They discussed guns, which was a topic Mr. S [REDACTED] was very interested in. Ms. S [REDACTED] had 6 or 7 guns in the apartment as well as a few antique guns. She said she no longer had guns.

The Defendant said she had firearms because of prior crimes she had been subjected to and because she was in great fear for her own safety and the safety of her family. She said Mr. S [REDACTED] was very impressed with her knowledge of firearms. Mr. S [REDACTED] told the decedent about how she had been bullied at school and victimized by crimes as an adult and Mr. S [REDACTED] said she would be safe with him as long as she allowed him to date and flirt with her. Ms. S [REDACTED] believed she could rely on Mr. S [REDACTED] for emotional support.

Mr. S [REDACTED] told the Defendant about how he had stolen merchandise in Russia and was proud of that. He asked the Defendant to participate in such thefts in New York and Ms.

S [REDACTED] refused. Mr. S [REDACTED] also described how he had acted forcibly to have sex with girls and guys without any consideration for their feelings. Conversations about sex usually occurred in the small bedroom where Ms. S [REDACTED] slept, with Mr. S [REDACTED] sitting close to her on the bed.

Ms. S [REDACTED] said she took a variety of anti-anxiety and anti-depressant prescription medications at the time she lived with the decedent and had been diagnosed with Borderline Personality Disorder, anxiety, depression, suicidal thoughts and a paranoid condition with schizoaffective disorder. She said all of these conditions and Split Personality Disorder were encompassed in Borderline Personality Disorder. Mr. S [REDACTED] was aware of the Defendant's consumption of medications, which she sometimes took in a cocktail which her doctor was not aware of and made her numb and in a similar state to being under anesthesia. Mr. S [REDACTED] did not take drugs or alcohol and was concerned about his physical health including tonsil problems. He was the Defendant's only friend at the time they lived together.

A few weeks after moving in, Mr. S [REDACTED] grabbed the Defendant's butt cheeks and that was repeated about 10-20 times after that. He spanked Ms. S [REDACTED] a few times. He rubbed his penis while naked against Ms. S [REDACTED]'s butt a few times and forcibly grabbed her nipples five or six times. Mr. S [REDACTED] put his penis in Ms. S [REDACTED]'s face which he thought was funny and cute. Ms. S [REDACTED] told him to stop these activities but he didn't stop. She believed these actions were designed to arouse, control and humiliate her.

Mr. S [REDACTED] hugged and forcibly kissed the Defendant and said she should be his "bitch" (a word Ms. S [REDACTED] translated from a Russian term). Ms. S [REDACTED] felt dirty and humiliated by all of these actions. The more she said no the more aroused he became. Mr. S [REDACTED] asked to take a picture of Ms. S [REDACTED] which she permitted and he took a picture of

her wearing women's clothing with her bra visible inside her partially unbuttoned shirt. He said she was sexy, beautiful, interesting, cute and smart. Ms. S [REDACTED] later saw him masturbating while looking at the picture.

Mr. S [REDACTED] invited a sex worker to their apartment in late January of 1996 and asked Ms. S [REDACTED] to participate in having sex with them. Ms. S [REDACTED] said she stayed at the apartment because she was afraid items might get stolen and rebuffed Mr. S [REDACTED]'s invitations to join him and the sex worker. After the sex, Mr. S [REDACTED] said he felt better and grabbed Ms. S [REDACTED], tried to kiss her and grabbed her butt cheeks. She said she felt dirty and humiliated by what had occurred with the sex worker.

This incident changed how Ms. S [REDACTED] felt about Mr. S [REDACTED] from positive to almost all negative. She slept at her parents' apartment that night and Mr. S [REDACTED] went to work at a job he had at a factory. She said she told her parents about this incident and Mr. S [REDACTED]'s rape of her [described below] only in 2005 because memories and details about the event started to come back at that time. She said this was "exactly in 2005". Transcript, p. 63.

After the sex worker incident, Ms. S [REDACTED] told Mr. S [REDACTED] that he would have to leave the apartment if he continued to invite prostitutes to their home. Mr. S [REDACTED] reacted with disappointment, said he could not afford to pay rent at another apartment, that Ms. S [REDACTED] could be his little girl even if she did not allow him to penetrate her and that he loved her, which Ms. S [REDACTED] thought was not sincere. Mr. S [REDACTED] then promised not to bring sex workers to the apartment and Ms. S [REDACTED] allowed him to stay, although she no longer trusted him.

He raped her in the middle of February of 1996. Ms. S [REDACTED] took a cocktail of medications which knocked her out and believed Mr. S [REDACTED] was aware of this. When she awoke the next morning, she felt a lot of pain in her rectum and butt. She then noticed she was

bleeding profusely from the anus and realized that since only she and Mr. S [REDACTED] were in the apartment he must have raped her. She confronted him when he returned from work later in the day and he admitted penetrating her, saying she made him feel better than most women. Ms. S [REDACTED] angrily told Mr. S [REDACTED] that he would have to leave the apartment and simulated potentially using a gun to defend herself. Mr. S [REDACTED] said he thought they were friends and could get married.

Mr. S [REDACTED] said he needed time to find another place to stay and the Defendant said he could have a week. He moved out about 10 days or 2 weeks later and in the interim Ms. S [REDACTED] stayed at her parents' apartment. On March 1, Mr. S [REDACTED] told Ms. S [REDACTED] that he had stolen all of the valuables from her apartment including her guns. He said that if Ms. S [REDACTED] complained about the rape or the thefts he would have Russian mafia members kill her and her parents. Mr. S [REDACTED] called Ms. S [REDACTED] three times in April. Ms. S [REDACTED]'s father told Mr. S [REDACTED] to return her property but her parents were not aware of the rape at the time. He told Ms. S [REDACTED] how satisfied he had been raping her and Ms. S [REDACTED] feared for her safety and the safety of her family. She kept watch at the apartment and armed herself again.

On April 30, 1996, Mr. S [REDACTED] called Ms. S [REDACTED] and said he wanted to come to the apartment and get his mail and would give Ms. S [REDACTED] \$700 to forget about everything which had transpired before. Ms. S [REDACTED] shot and killed Mr. S [REDACTED] that day. She also said the decedent's sexual actions against her had escalated over time. On that day, Ms. S [REDACTED] said she was scared and humiliated and brought Mr. S [REDACTED] and another person named Paul Solomonov back to her apartment. Mr. S [REDACTED] discussed his offer to settle matters and then the three left the apartment and went to the first floor above the stairs.

Mr. S [REDACTED] pulled out a small gun and displayed it and Ms. S [REDACTED] and Mr.

Solomonov wrestled it away. Ms. S █████ held the gun and told Mr. S █████ she knew he had come to kill her and her family and that he had ruined her life. She was in a state of shock and her brain was foggy. Mr. S █████ asked Ms. S █████ why she didn't shoot him and then she shot Mr. S █████ once in the head. She said she had never shot anyone before and felt it was a life or death matter. She said she felt that if she let Mr. S █████ leave, he would kill her and her family and that she made a split-second decision. She said the rape made her feel like a piece of trash and not a person, as if she had been thrown away.

After being arrested for the murder that day, she spent about 6 weeks at Bellevue where she said she was treated very disrespectfully and one staff person subjected her to anti-gay and anti-transgender slurs and offensive language and attempted to prohibit her from shaving any part of her body other than her face. She was then transferred to an observation unit at Rikers Island where she was pressured to perform sexual acts by incarcerated persons working as aides but was not forced to and she did not engage in sexual relations. She had a feminine appearance at the time and received many unwelcome sexual comments about that. She left Rikers in February of 1998 and was incarcerated in the State Department of Corrections and Community Supervision ("DOCCS") until January 18, 2022 for a total of about 26 years of incarceration.

In DOCCS in general population in mens prisons Ms. S █████ was repeatedly sexually harassed and targeted for theft because of her gender identity. She asked some questions about being transferred to a women's prison but did not seek such a transfer because she was uncertain what would happen. She said she sought to be identified as female beginning in 2014 although she identified as a woman much earlier and always felt closer to girls than boys. She was subjected to both non-offensive and derogatory and degrading comments based on her gender identity.

Guards made derogatory remarks to her and one officer stole her commissary items to humiliate and punish her for her gender identity. She was placed in solitary confinement for disciplinary reasons at one point and also placed in a special program unit. She spent most of her time in protective custody at her request. She was subject to sexual harassment constantly when in general population and tried to be isolated. She would sometimes wear make-up when she could hide that within her cell. She felt that if she expressed her gender identity among others she would be targeted.

On one occasion a guard rubbed his penis against her clothed buttocks while slapping her cheeks. Ms. S [REDACTED] made a complaint and the officer was disciplined. On another occasion, two officers asked her to go to another area and provide sexual favors for them and, when she refused, they slapped and squeezed her butt cheeks. They then stole some of her property from her cell. She complained about this but was not sure anything happened to the officers and was told the actions were not serious enough to warrant discipline. She was transferred to another prison, however. At another facility, a guard tried to extort property or sex from Ms. S [REDACTED] and used derogatory language regarding her gender identity. She then complained and he sexually assaulted her by forcibly putting his fingers in her rectum at least six times. On another occasion, an incarcerated person acting for an officer threatened her with a shank and made her surrender her property.

When in protective custody she would remain in her cell 23 hours per day. The sexual assaults and harassment caused her to relive the rape by Mr. S [REDACTED] v [REDACTED]. She had visits with her parents in a trailer. She missed family funerals while in prison. She recounted her inadequate medical care while incarcerated, particularly with respect to bladder and bowel issues, and the long waits she endured for medical care.

Her elderly parents who she lives with accept her gender identity and Ms. S [REDACTED] and her parents joke about it. She said that she felt good now and engaged in cooking, cleaning, taking care of the house, shopping, learning to drive and attending to her mental and physical health issues. She sees mental health therapists, takes mental health medications and takes a variety of medications to treat medical conditions primarily related to gastro-intestinal issues. She lives in nature and has a good professional relationship with her parole officer. Her father is nearly blind and deaf. She said she is learning to use a phone and computer and print materials which were previously stolen from her. She said she feels more strongly about her female gender identity and wants to make friends. Ms. S [REDACTED] discussed the restrictions she currently faces on parole and said she would continue with mental health treatment if she were no longer on parole.

On the day of the murder, Ms. S [REDACTED] acknowledged that inside her apartment she had a bulletproof vest, a sawed-off rifle, a starter pistol, a black revolver, an inert shell, 3 inert rifle grenades, components to make homemade explosives, fuses attached to containers, 24 small hand-held incendiary devices which could function as a bomb, smokeless shotgun powder, an electric cord with match heads and nails connected to act as shrapnel, 6 pounds of pyrodex, metal pipes and arsenal flares for signaling, 3 M-31 inert rifle grenades, and an inert missile. She had taught herself to make these devices and taught herself to make firearms. She also had materials on how to make bombs and literature about dictatorships. Ms. S [REDACTED] was originally charged with 16 counts of Criminal Possession of a Weapon in the Third Degree and pled guilty to one count as part of her plea agreement.

Ms. S [REDACTED] said she possessed the non-inert items because she was scared and paranoid and would not leave the apartment without a firearm and a flare for emergency signaling. She

said she possessed the bomb making materials to protect her in the event she was attacked in her apartment and to maintain her piece of mind. She said she no longer had any interest in possessing any firearms or explosives and lived in a very safe place.

Testimony of Senior Parole Officer Timothy Kelly

The People presented the testimony of Officer Kelly who supervises Ms. S [REDACTED]'s parole officer. Ms. S [REDACTED] was released to parole on January 18, 2022. Although she is subject to potential lifetime parole, she is eligible for a three year discharge on January 18, 2025. This is a discretionary decision and is largely based on a parolee's compliance with conditions. Ms. S [REDACTED] is subject to standard parole conditions and in addition must attend mental health treatment and has completed anti-aggression training. Ms. S [REDACTED] must check-in monthly with her parole officer, observe a curfew, receive permission to travel out-of-state, submit to drug-testing and not frequent locations where alcohol is served. She is designated as Level 2, or "high-risk" by parole which is the second of 4 risk levels on the parole "COMPASS" system with Level 1 being the highest risk level. Her risk level in part reflects the crimes she was convicted of. Ms. S [REDACTED] has not incurred any parole violations.

Evidence Regarding the Murder & Disciplinary Infraction

The People recounted, without objection, evidence from the trial which contradicted the defendant's account of the murder. That evidence indicated that the Defendant chased the decedent out of her apartment and then shot Mr. S [REDACTED] while he was hiding under a stairwell. The People also recounted evidence about the Respondent's possession of an explosive device in prison in 1999. The Defendant asserted in a 2017 parole hearing that this device had been designed to cook food but prison authorities found this contention not credible. The People also noted that the Defendant had 32 total disciplinary infractions while at DOCCS over a period of

roughly 23 years.

CONCLUSIONS OF LAW

The Credibility of the Defendant's Allegations of Sexual Abuse and Rape

Ms. S [REDACTED]'s reports of sexual abuse and rape were not supported by corroborating evidence from outside sources. At sentencing, the Court noted that the Defendant and the decedent had a "complicated relationship" but the parameters of the relationship were not explained. The Defendant's attorney described the connection between Ms. S [REDACTED] and the decedent at sentencing as "a tortured, complex relationship that no one really will know the full extent of" and sought the minimum sentence primarily because of the Defendant's mental health issues. Sentencing transcript, p. 52.

Ms. S [REDACTED]'s accounts of her rape and sexual abuse by Mr. S [REDACTED] are documented in records concerning her own reports. These include parole records from 2019 and records from the Central New York Psychiatric Center whose precise dates are unclear. An affidavit from Ms. S [REDACTED]'s mother recounts that Ms. S [REDACTED] reported the sexual abuse to her in 2003 although Ms. S [REDACTED] in her testimony at the hearing said she was sure this was reported to her mother in 2005. An affidavit from Ms. S [REDACTED]'s father corroborates the report that Mr. S [REDACTED] stole Ms. S [REDACTED]'s property and threatened to kill Ms. S [REDACTED] and her parents. The conflict between Mr. S [REDACTED] and Ms. S [REDACTED] was also corroborated in an affidavit from the Defendant's mother

Ms. S [REDACTED] was obviously an interested witness, a factor which weighed against her credibility. It is also obviously true that Mr. S [REDACTED] was not available to provide his account of the events preceding his murder because Ms. S [REDACTED] killed him. It would not be surprising if Mr. S [REDACTED] were he alive and able to testify, had a different version of the events preceding

his murder than Ms. S [REDACTED] testified to. Mr. S [REDACTED] v's parents, writing from Russia at the time of the murder, obviously loved their son and believed he was the victim of a terrible crime. Ms. S [REDACTED] was under the influence of prescription medications at the time of the events she testified about which may have obscured her perceptions. Her perceptions may have also been impaired by her significant psychiatric issues.

Ms. S [REDACTED]'s testimony about the murder was contradicted by the court record, which indicated not that Ms. S [REDACTED] wrestled a gun away from Mr. S [REDACTED] but that Ms. S [REDACTED] chased Mr. S [REDACTED] and then shot him. The Court did not credit Ms. S [REDACTED]'s testimony about how the murder transpired, which further undermined her general credibility.

The Court of course understands that it is not uncommon for survivors of sexual assault to suppress memories of that trauma and/or not timely report sexual assaults. It is also notable that while there was limited corroboration of Ms. S [REDACTED]'s reports, they were also not impeached during her testimony, with the exception of the impeachment regarding the murder itself. Having spent hours listening to Ms. S [REDACTED]'s testimony, however, the Court found the parameters of what she testified to credible. Some of the information was corroborated by other sources. In observing Ms. S [REDACTED]'s demeanor the Court did not have the sense that she was lying. Indeed, much of the narrative concerned a relationship which was so unusual it would appear difficult to fabricate. The Court makes these observations while recognizing that such subjective credibility assessments are prone to error. Put simply, in a case where the Court had to decide whether or not to believe Ms. S [REDACTED]'s general narrative, the Court believed that the events Ms. S [REDACTED] testified to were generally accurate.

Crediting her account, the Court finds Ms. S [REDACTED] "was a victim of domestic violence subjected to substantial physical, sexual or psychological abuse". The decedent's abuse occurred

over multiple months. It involved sexual harassment but also sexual assaults, preceding the rape. The touching and squeezing of the Defendant's sexual or intimate parts she testified to were crimes, although they were not reported to the police or prosecuted. The rape of Ms. S [REDACTED] while she was unconscious was not only extraordinarily heinous and traumatic, but caused obvious physical injury. The decedent's threats to kill the Defendant and her parents, who she apparently cares deeply for, were also part of the pattern of physical and sexual abuse. All of this was perpetrated on a victim who was uniquely vulnerable, because of her psychiatric issues, medication consumption and status as a transgender woman who was understandably fearful of expressing her gender identity outside what she thought were the safe confines of her apartment.

The Defendant and the Decedent Were in an "Intimate Relationship" Under the Statute

Under the statute, a person seeking relief must demonstrate that at the time of the offense, the Defendant was the victim of domestic violence perpetrated by a member of the Defendant's family or household as defined by CPL 530.11 (1). PL. 60.12 (1). A person not related by consanguinity or affinity constitutes a member of the Defendant's family or household if the two persons are in an "intimate relationship". CPL 530.11 (1) (e). Under this provision it is not necessary that the two persons live together.

In making a determination of whether an "intimate relationship" exists the Court is directed to consider the following non-exclusive factors: "the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship" *Id.*

The Court finds that the evidence at the hearing demonstrated that the Defendant and the

decedent were in an intimate relationship as defined by the statute. Although living together is not required in order for an intimate relationship to exist, the Defendant and the decedent lived together in a one bedroom apartment with a small bedroom for approximately 5 months. They conducted some household activities, like cooking or watching television together on occasions. They discussed intimate details of their lives, like their sexual experiences and the history of their lives in Russia. Ms. S [REDACTED] testified that the decedent was her only friend at the time. The decedent moved into the apartment in order to provide care for the Defendant, who needed a companion because of her psychiatric issues, and Mr. S [REDACTED] did not pay rent. Mr. S [REDACTED] sexually harassed, flirted with and sexually assaulted Ms. S [REDACTED]. He then raped her. He asked her to marry him.

It is evident that none of the explicit descriptive exclusions of the kinds of relationships which do not qualify as intimate under the statute apply here. The relationship was not a “casual acquaintance” nor did it consist of “ordinary fraternization” in a business or social context. The relationship was certainly unusual in that differed greatly from the more common scenario in which domestic violence permeates a relationship between romantic partners. The relationship was extraordinarily destructive, encompassing sexual harassment, sexual assault, rape and murder. But it was also intensely personal. Under these circumstances, in the Court’s view, the Defendant and the decedent were in an intimate relationship under the law.

Applying the Statute Where a Sentence Was Imposed Long Ago

The DVSJA creates an interpretative question in cases like this where a sentencing reduction is sought for a sentence which has already been largely served. Were this motion made at about the time of the Defendant’s sentencing the question would be whether the Defendant’s sentence of 20 years to life imprisonment was unduly harsh and should instead be

replaced with a sentence with a determinate term of up to 15 years and 5 years of post-release supervision.

In this case, however, that assessment would constitute a theoretical exercise. The fact is that the Defendant has already served 26 years of incarceration. Those years cannot obviously now be rescinded. The practical question now is whether, having served 26 years of incarceration, the Defendant should be subject to lifetime parole, with the possibility of having that parole rescinded in about 1 ½ years and then possibly rescinded at additional points in the future, or whether the Defendant's parole should be rescinded now. The Court has concluded that, having already served 26 years of incarceration and been placed on parole for 1 ½ years, any additional period of parole supervision would be unduly harsh and that the Defendant should therefore effectively have her parole rescinded by being sentenced to a prison term and period of parole she has already served.

Reasons for the Court's Decision

If the prerequisites for relief under the statute are met, the Court may impose a reduced sentence if "having regard for the nature and circumstances of the crime and the history, character and condition of the defendant . . . a sentence of imprisonment [previously imposed] would be unduly harsh". PL 60.12 (1). The Court is also directed to consider the Defendant's institutional confinement history in making a decision. CPL 440.47 (2) (e). These standards obviously invest the Court with extraordinary discretion to make a value judgment about the quantum of punishment the Defendant's crime justifies. The Court has reached its ultimate decision for the following reasons.

The DVSJA's coverage is very broad. This case, however, in the Court's view, concerns a circumstance at the heart of the statute's purpose: a case in which a defendant commits a crime

against their abuser, and commits that crime by virtue of the abuse which was perpetrated on the Defendant. Ms. S [REDACTED] was targeted for sexual harassment, assault and a rape by the decedent because she was a transgender woman. She was uniquely vulnerable because of her gender identity, mental health problems and consumption of psychiatric medications. The crime the Defendant committed was heinous, a murder, which was not justified. Mr. S [REDACTED] did not deserve to die. But relief under the DVSJA does not mean a defendant is not criminally responsible for a crime. It is judgement that a sentence imposed for a crime was unduly harsh.

Ms. S [REDACTED] prior to the crimes for which she was convicted in connection with the murder had no criminal history. In the Court's view, living with her parents at age 56 she does not pose a current threat to the community. She has apparently been fully compliant with the terms of her parole since being released.

Ms. S [REDACTED]'s possession of an extraordinary arsenal of weapons at the time of the murder, in the Court's, view, weighs heavily against granting the relief requested here. She also was found to have an explosive device in 1999, shortly after her conviction. But the Court also understands that the possession of these weapons at the time of the murder was fueled by Ms. S [REDACTED]'s fear and paranoia. The Court understands, of course, that the restrictions being placed on Ms. S [REDACTED] pursuant to her parole are not onerous. But the Court also believes that 26 years in prison and 1 ½ years of parole supervision are an adequate punishment, under the circumstances, for the terrible crimes Ms. S [REDACTED] committed. In addition to all of the normal consequences of serving an extended prison sentence, Ms. S [REDACTED]'s incarceration, as she outlined during the hearing, was more onerous in significant ways because of the danger, harassment and assault she faced in prison as a transgender woman and her need to protect herself through protective custody. Moreover now, even without the relief being granted here,

Ms. S ██████'s compliance with all of her parole conditions might lead her parole to be rescinded in 1 ½ years anyway.

For all of those reasons, the Defendant's motion is granted. This constitutes the Decision and Order of this Court.

July 7, 2023

 /S/
Daniel P. Conviser, A.J.S.C.