

STATE OF NEW YORK
COUNTY COURT: COUNTY OF SULLIVAN

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

JAMES SNOWDEN,

Defendant.
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DECISION and ORDER
Indictment No. 156S-2014

Motion to Dismiss

APPEARANCES: Michael H. Sussman, Esq.
Sussman & Associates
Post Office Box 1005
1 Railroad Avenue—Suite 3
Goshen, NY 10924
Attorney for Defendant

Hon. James R. Farrell
Sullivan County District Attorney
414 Broadway
Monticello, NY 12701
By: Meagan K. Galligan, Chief ADA, of counsel
Attorney for the People

Schick, J.:

This matter comes before the Court by way of Defendant's third motion to dismiss. A detailed statement of the facts and background of this case can be found in this Court's September 23, 2015, Decision and Order, and this Court's April 19, 2016, Decision and Order and will, therefore, not be repeated here in detail.¹ The case arises from an incident in which Defendant Snowden (hereinafter, "Snowden") and co-Defendant Gordon Jenkins, the former Mayor of the Village of Monticello, Sullivan County, New York, were indicted and charged with bribe receiving, official misconduct, conspiracy and environmental crimes.

By Decision and Order, dated September 18, 2015, this Court denied Defendant's motion to dismiss the Indictment as part of his Omnibus motion. By Supplemental Decision and Order on the Omnibus motion, dated September 23, 2015, this Court, once again, denied Defendant's motion to dismiss the Indictment for legal insufficiency. Subsequent thereto, co-Defendant Gordon Jenkins entered guilty pleas to three misdemeanors in full satisfaction of the within Indictment. Defendant Jenkins also paid a substantial sum of restitution as part of that plea

¹ *People v. Snowden*, 49 Misc3d 1203(A) [Sullivan Co. Ct. 2015].

agreement. Defendant Jenkins did not implicate Defendant Snowden in his plea allocution. Thereafter, Snowden filed his second motion to dismiss the Indictment, basing his arguments in support of dismissal on co-Defendant Jenkins' guilty pleas to only misdemeanors and an allocution void of facts or implicating Defendant Snowden of the Bribe Receiving or Conspiracy charges in the Indictment. Snowden also submitted a motion for release of the Grand Jury minutes to defense counsel, so defense counsel could assist the Court with determining the contemporaneous motion to dismiss. That combined motion was denied by the Decision and Order dated April 19, 2016.

In this, his third motion to dismiss, Defendant Snowden makes his motion in the interest of justice, pursuant to **CPL §210.40**. For the reasons stated below, Defendant's motion is granted, and the Indictment against him is dismissed in its entirety.

Pursuant to **CPL §210.40**,

An indictment or any count thereof may be dismissed in furtherance of justice, as provided in paragraph (i) of subdivision one of section 210.20, when, even though there may be no basis for dismissal as a matter of law upon any ground specified in paragraphs (a) through (h) of said subdivision one of section 210.20, such dismissal is required as a matter of judicial discretion by the existence of some compelling factor, consideration or circumstance clearly demonstrating that conviction or prosecution of the defendant upon such indictment or count would constitute or result in injustice.

(see also People v. Banks, 100 AD3d 1190 [3rd Dept. 2012], lv denied 20 NY3d 1059 [2013]; People v. Laughing, 113 AD3d 956 [3rd Dept. 2014]).

Furthermore,

In determining whether such compelling factor, consideration, or circumstance exists, the court must, to the extent applicable, examine and consider, individually and collectively, the following:

- (a) the seriousness and circumstances of the offense;
- (b) the extent of harm caused by the offense;
- (c) the evidence of guilt, whether admissible or inadmissible at trial;
- (d) the history, character and condition of the defendant;
- (e) any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest and prosecution of the defendant;
- (f) the purpose and effect of imposing upon the defendant a sentence authorized for the offense;
- (g) the impact of a dismissal upon the confidence of the public in the criminal justice system;
- (h) the impact of a dismissal on the safety or welfare of the community;

- (i) where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion;
- (j) any other relevant fact indicating that a judgment of conviction would serve no useful purpose.

(CPL §210.40(1)(a-j)). A court need not mechanistically analyze each factor; the factors are intended to provide guidance to a court when considering a motion to dismiss in the interest of justice. (*See People v. Haugh*, 26 Misc3d 1029 [Justice Ct, Town of Henrietta 2009]). This Court will, however, consider each factor.

In the instant matter, although the allegations are of a serious nature, it is unclear to this Court that there was any harm to the environment or any individuals in the vicinity of the structure that was demolished. CPL §210.40(1)(a), (b). Moreover, as this Court has indicated in past decisions, the evidence of Snowden's guilt is extremely tenuous, at best. CPL §210.40(1)(c). Snowden served as the building inspector and code enforcement officer for the Village of Monticello from May, 2010, to September, 2016. He was state certified for the position, and after taking the civil service test, was appointed to that position from a civil service list. He was terminated by the Village of Monticello after a proceeding initiated by the Village of Monticello. Snowden has since filed an Article 78 proceeding in Sullivan County Supreme Court seeking judicial review of that decision.

Snowden has no criminal history, and his "character and condition" do not raise any concerns for this Court. CPL §210.40(1)(d). He has no criminal record or record of any other type of misconduct. There has been no alleged misconduct on the part of any officers investigating this matter, CPL §210.40(1)(e), so this subsection is not pertinent to the within analysis. The "effect of imposing upon the defendant a sentence" if he were to somehow be convicted of the charges in the indictment is, however, of relevance and concern to this Court. CPL §210.40(1)(f). Defendant Jenkins, Snowden's co-defendant, pleaded guilty to three misdemeanors in satisfaction of the Indictment. He paid restitution. If Snowden were to somehow be convicted of any of the charges in the Indictment, imposing an authorized sentence would serve absolutely no purpose. Co-defendant Jenkins has already pleaded guilty to several misdemeanors in satisfaction of the Indictment and paid restitution. Therefore, there is not, and would not be, any justification for this Court to impose a sentence on Snowden, who has no criminal history, and has already suffered terminated from his employment.

The impact of a dismissal in this matter would have little, if any impact on the confidence of the public in the criminal justice system, CPL §210.40(1)(g), and would have absolutely no effect on the safety and welfare of the community. CPL §210.40(1)(h). Any members of the public who might have been following this case beyond the initial reports in the local newspaper, likely already know that Defendant Jenkins pleaded guilty and paid restitution in connection with the matter. There has been no public outcry demanding a trial of Snowden, CPL §210.40(1)(i) and there is no indication that members of the public or the Village of Monticello have any interest in the People pursuing a case against Snowden after his employment termination.

Because Snowden has no criminal history and is currently not employed by a governmental entity, dismissal of the charges would have no effect on the safety and welfare of the community.

The record before this Court, including the Grand Jury minutes, indicates that the only way the People may be able to attempt to prove each of the elements of each of the charges in the Indictment, is through an attenuated chain of reasoning, which would find little legal support. It is highly unlikely that such a conviction, if one was even had, could withstand appellate review. (*People v Hutchins*, 136 AD3d 1148 [3rd Dept. 2016]). To obtain a conviction for Official Misconduct, the People must prove at trial that Snowden committed an “act” relating to his office but constituting a knowing, unauthorized exercise of official function. (*See People v Barnes*, 117 AD3d 1203 [3rd Dept. 2014]). There is nothing in the record to suggest that the People can prove such an “act” occurred. This Court agrees with defense counsel that the People are unlikely to be able to prove that any words or actions by Snowden were not the “product of inadvertence, incompetence, blunder, neglect or dereliction of duty.” *Id.*, at 1206. There can be no lawful conviction for Official Misconduct if there was no predicate unauthorized act. A judgment of conviction, which is highly unlikely, would serve no justifiable purpose in this case. CPL §210.40(1)(j).

In the instant matter, the charges must be dismissed in the interest of justice. Snowden has no criminal history. He has already been terminated from his employment. The People offered Snowden an adjudication in contemplation of dismissal, in essence, acknowledging that his only connection to this matter was his association or friendship with the co-defendant, former Mayor Gordon Jenkins. Based on Defendant Jenkins’ plea to misdemeanors, in satisfaction of the bribe receiving, official misconduct, and conspiracy charges, it would serve no legitimate purpose to move this matter forward to trial.

Based on the foregoing, it is

ORDERED that Defendant Snowden’s motion to dismiss Indictment 156S-2014 is granted in the interest of justice.

This shall constitute the Decision and Order of this Court.

DATED: January 26, 2017
Monticello, New York


HON. STEPHAN G. SCHICK, JSC