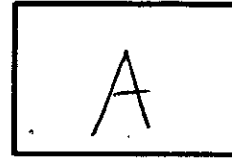


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To be argued by:
BENJAMIN L. NELSON
Estimated time: 5 minutes

Docket No. KA 15-01257

Supreme Court of the State of New York
Appellate Division, Fourth Department

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff-Respondent,

-VS-

BENJAMIN BROWNLEE,

Defendant-Appellant.

BRIEF FOR DEFENDANT-APPELLANT

Monroe County Indictment No. 2014-0476

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QUESTION PRESENTED

Benjamin Brownlee was accused of strangling a fellow DOCCS inmate with a seatbelt while the two of them were being driven between prisons. That inmate and the two correction officers in the van were the only witnesses at his trial, which began more than 18 months after the incident, and more than a year after indictment.

Five days before trial, the prosecutor gave Mr. Brownlee's attorney a medical report describing the absence of observable injury to the inmate-complainant; she turned over color photographs depicting the absence of injury midway through her case-in-chief. Defense counsel complained that these late disclosures were *Brady* violations that impaired his ability to defend his client, and asked that the indictment be dismissed. The trial court denied that request. A jury acquitted Mr. Brownlee of both counts charged in the indictment, but convicted him of a lesser included offense. He now appeals.

The question presented is: Did the prosecution violate its duties under *Brady v Maryland* (373 US 83 [1963]) and its progeny by withholding the complainant's medical records until shortly before trial?

The trial court did not expressly rule that the late disclosure of the records was a *Brady* violation, though it offered defense counsel a remedy short of dismissal of the indictment, which counsel ultimately declined.

PRELIMINARY STATEMENT

Benjamin Brownlee appeals from the June 3, 2015 judgment of the Monroe County Court (Christopher S. Ciaccio, Judge), convicting and sentencing him, after a jury verdict, on one count of criminal obstruction of breathing or blood circulation (Penal Law § 121.11 [a]). Mr. Brownlee was sentenced principally to one year in jail—time served, in effect, as he had spent nearly a year in custody awaiting trial.

No application for a stay of execution of this judgment pending appeal was made, nor was any order issued pursuant to CPL 460.50. There were no co-defendants.

STATEMENT OF FACTS

On the afternoon of November 12, 2013, two New York State correction officers were assigned to drive two inmates from Wende Correctional Facility, near Buffalo, to Marcy Correctional Facility, near Utica. The trip was interrupted by a disturbance in the back of the DOCCS van as it passed through Monroe County on the Thruway. According to the correction officers, one of the inmates, Benjamin Brownlee, strangled the other, Brandon Short, with a seatbelt until Short became unconscious. Officer Janine Samson, who was driving, pulled over; her partner, John Buczek, entered the rear compartment, fought with and restrained Mr. Brownlee; and the van continued its trip east. At the direction of their superiors, the officers detoured to Auburn Correctional Facility, where Mr. Brownlee, inmate Short, and Officer Buczek were examined for injuries and photographed. The two officers eventually drove Short the rest of the way back to Marcy, leaving Mr. Brownlee at Auburn.

A. Discovery and *Brady* Issues Addressed Prior to Trial

Six months later, Mr. Brownlee was indicted on one count each of assault in the second degree (Penal Law § 120.05 [3]), for causing injury to Officer Buczek, and strangulation in the second degree (Penal Law § 121.12), for strangling Short. He filed pre-trial motions seeking a bill of particulars, discovery, and *Brady* material, among other relief. The particulars sought included “[a] detailed description of the

physical injury allegedly caused by the Defendant” and specification of which result constituting strangulation in the second degree—stupor, loss of consciousness, physical injury, or physical impairment—Mr. Brownlee was alleged to have caused to inmate Short (Appendix [“A”] 23). The discovery demand requested production of, among other items:

- “[a]ny photograph . . . relating to the criminal action or proceeding which was made or completed by a public servant engaged in law enforcement activity” (A 24);
- “[a]ll photographs . . . used or made during the course of the investigation underlying the charges contained in the Indictment, for whatever purpose” (A 25); and
- “[a]ny and all documents, reports, notes, memoranda, or synopses detailing, in any fashion, the results of any physical or mental examination of the defendant . . . or any prospective witness” (A 29).

The motion also asserted Mr. Brownlee’s right to discovery of favorable evidence under *Brady v Maryland* (373 US 83 [1963]) and its state and federal progeny (A 34–40), citing to cases holding that “[t]he mandate of *Brady* extends beyond any particular prosecutor’s actual knowledge – an individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government’s behalf in the case, including the police” (A 39; see *People v Wright*, 86 NY2d 591, 598 [1995]; *Kyles v Whitley*, 514 US 419, 437 [1995]).

The prosecutor responded to the demand for a bill of particulars by specifying that Mr. Brownlee “is alleged to have choked Brandon Short to the point of

unconsciousness or stupor" (A 55), but she did not expressly disclaim physical injury or impairment as a basis for the strangulation charge. Instead, this portion of Mr. Brownlee's demand, and his request for "[a] detailed description of the physical injury allegedly caused," were "[r]efused as beyond the scope of a bill of particulars" (A 55).

The prosecutor's response to the discovery demand read in its entirety:

"To date, the People have provided all discoverable material in their possession pursuant to Article 240 of the CPL. The People are aware of, and will comply with, their continuing duty to disclose under this Article. To the extent that there may be photographs, video or audio tapes, property, or other evidence in this case in the custody of the arresting or investigating agency, the People are available, upon the defendant's request, to meet at a mutually convenient time and place to view or inspect such evidence. All other requests are refused as beyond the scope of discovery provided in Article 240."

(A 55-56.) Her response to Mr. Brownlee's *Brady* demand was that she "is presently unaware of any such *Brady* material" (A 58).

At a proceeding held just after the prosecution had filed this response, the court asked Mr. Brownlee's attorney whether any discovery issues required its attention. Counsel acknowledged that "some documents have been provided" but speculated that certain other documents, pertaining to DOCCS "administrative proceedings," existed but had not been provided (9/17/2014 Tr at 4 ["I know that there were some certain determinations that were made as a result of this alleged incident and I don't have anything from those."])). Counsel made clear that he was

not alleging “any willful failure to produce those” documents on the prosecutor’s part; rather, he believed that he “may need a subpoena because DOCCS may not turn over voluntarily” (*id.*). The prosecutor did not participate in this discussion. At the next appearance, seven weeks later, County Court scheduled trial for June 1, 2015—eight and a half months after the September 17 discovery discussion (11/5/2014 Tr at 4).

B. *Brady* Developments During Trial

On June 1, as the parties were about to begin jury selection, Mr. Brownlee’s attorney told the court that the prosecutor had turned over “a fairly sizable chunk of documents late in the week last week,” and that in reviewing them, he had learned for the first time of the existence of “photographs which were actually taken on the day of the offense” (6/1–6/3/2015 Tr [“T”] at 9). Upon his further request, the prosecutor had obtained and provided “photocopies” of these photographs that “are basically unusable” (T 9); the prosecutor agreed that they were “black and white and grainy” (T 11). Defense counsel argued that if the original-quality photographs could not quickly be located, “there is a material issue in terms of our ability to go forward . . . because again they are material to the allegations in this case” (T 9).

The prosecutor responded that “the material that was provided to counsel Wednesday of last week was all, to the best of my knowledge, *Rosario* material except for these photographs which, as he indicated, were not in any of the original

police packages. So, I did not know they existed until the middle of last week" (T 10). After receiving defense counsel's emailed request for the originals on Saturday, she had assigned an investigator "to spend today tracking [them] down" (T 10). The court asked her whether the defense had received "[m]edical records" and she answered, "No medical records for his client. There was no medical treatment provided" (T 11). The court then asked: "To the victims?" and the prosecutor answered, "Correct. He does have the medical records of Officer Buczek, who was also injured" (T 11).

The next morning, with jury selection complete, Mr. Brownlee's attorney complained that he had still not received the photographs, which, he emphasized,

"are important in terms of the defense that we intend to present on behalf of Mr. Brownlee, given that my understanding is that the photographs do not -- that there were no injuries other than a minor scratch to the front of Mr. Short who is allegedly, now looking at the Grand Jury testimony, being strangled with this seatbelt for almost three minutes."

(T 227.) Counsel agreed with the court's characterization of why these photos would be helpful to the defense: "So, they depict the injury and your interpretation is they depict lack of injury?" (T 227).

Defense counsel next asserted that medical records pertaining to Brandon Short, turned over six days earlier, constituted *Brady* material:

"And on top of that, included in the *Rosario* material, Your Honor, was the first medical record that I received for Mr. Short which verifies that same thing. So, I'm not even going to be able to present that medically

due to the late disclosure of that *Brady* material. I didn't have time to subpoena the person who reviewed this person, evaluated him Those are in that packet of *Rosario* material that [the prosecutor] and I talked about. That's not *Rosario*. That was *Brady* material, and that was supposed to be turned over a year ago."

(T 228.) Counsel further alleged that information contained in the prosecution's *Rosario* production—"that Officer Buczek has claimed a disability, almost a permanent disability as a result of all of these injuries and not just his hand"

(T 229)—was *Brady* material because "[t]he addition of these injuries not previously claimed" created a

"motive to lie and motive to fabricate, especially when you look at the way Officer Buczek threw these additional injuries in for the first time in the Grand Jury testimony, again which I received for the first time yesterday. So, there are numerous *Brady* violations here, Your Honor. There is injuries that are alleged outside the scope of the Bill of Particulars, and our ability to present a defense is now hurt because of our inability to follow through with any of this information that could be important to or crucial to the defense that we want to present on behalf of Mr. Brownlee."

(T 229–230.)

The prosecutor first addressed the still-missing photographs. Her investigator reported "that the original JPEG files have been deleted and that they are typically only kept for approximately ninety days" (T 230). She disagreed that the loss of this evidence "somehow infringes or impedes the defendant's ability" to contest the charges, because Brandon Short had stated "I did not receive any injuries to my neck" in a supporting deposition; accordingly, she argued, "there was never any

allegation that he had injury to the neck," and she did not "anticipate that Mr. Short would testify to anything beyond what is in his deposition" (T 231). The court asked her to be specific: "[W]hich aspect of strangulation is he going to testify to?" (T 232) "Loss of consciousness is what I anticipate," she said, but she would not commit to proceeding on that theory only: "If he testifies about physical injury, I anticipate it will be along the lines of what is in the deposition, that there were no injuries to the neck but he had back pain afterward" (T 232).

The prosecutor also justified her eve-of-trial disclosure of the photographs:

"[T]he People were made aware of the existence of that package and those photographs the middle of last week by defense counsel. My understanding is his client let him know that those occurred, and I would submit that the People did not proceed in bad faith with regard to that. We did not have knowledge of that. And, in fact, the defendant had knowledge that those photographs were taken of him, as well. So, we have turned over everything we have."

(T 232.) Mr. Brownlee's attorney argued in response that the prosecutor's *Brady* obligations were not defined by what was in her physical possession, but extended to materials "in the control of any government agency" (T 233, 235-236). He disagreed that Mr. Brownlee's having been photographed while at Auburn Correctional Facility excused the prosecution's failure to preserve and disclose photos of inmate Short: "He was only there for the ones they took of him. He was not there for the ones of Mr. Short" (T 236). The remedy he sought for the *Brady* violations was dismissal of the indictment (T 237).

1. The court's proposed remedy for the missing photographs

County Court's first response to these *Brady* claims was to propose an adverse-inference instruction as "a way to compromise" the destruction of the color photographs (T 233). But it expressed uncertainty as to whether the photos were "really necessarily *Brady*" (T 233-234). At first the court's uncertainty was derived from its inability to know for sure what the photos depicted: "Do we know the photos don't show an injury?" (T 233). Later, the court seemed to be willing to assume that they did indeed depict the absence of injury,

"but it doesn't necessarily follow that having the strap around his neck is going to cause an injury. If it was placed in such a way that it was -- let's say the edge of the strap was cutting into his neck. Let's say it was placed flush against his neck. Therefore, it is not necessarily an injury. So, I think one doesn't necessarily flow from the other. The fact that he doesn't have injuries doesn't mean that the strap wasn't around his neck. So, it strikes me as if the argument is going to be made it is not *Brady*. That's where the argument is. It is not necessarily *Brady* because you don't know having the strap around his neck necessarily causes that injury."

(T 238-239.) The prosecutor did not make this argument herself, but the court did adopt it as its ruling: "[I]t's a close call but I will rule that the photographs aren't necessarily *Brady* because it doesn't necessarily follow that having the strap around his neck is going to cause the injury, although it is certainly an argument that could have been made" (T 242).

Despite ruling that the photos were not *Brady* material, the court fashioned a remedy for their spoliation, reasoning that "if it is not *Brady* it in the natural course

of discovery should have been turned over in a timely fashion" (T 242; *see* T 233 [court's comment that it "can't believe they aren't preserved It was clear that a crime had been committed, and they have to understand that they had a duty to preserve those JPEG files"])). The court resolved to give an adverse-inference instruction:

"In essence it would be that there were photographs taken and that the People have not produced those photographs and you may draw an inference favorable to the defendant or unfavorable to the People based upon that missing information that may or may not have shown the extent of the injury sustained as a result of the strap being around . . . Mr. Short's neck."

(T 242–243.) The court instructed defense counsel to elicit testimony about the photos from inmate Short, so that this instruction would make sense to the jury (T 243–244). It also instructed the prosecutor to avoid eliciting testimony from Short "about any aspect of a neck injury" (T 238), and to prevent Officer Buczek from testifying that he sustained "permanent disability" or other injuries that the defense had learned of for the first time when his grand jury testimony was turned over as *Rosario* material (T 241–242).

2. The court's proposed remedy for the late-disclosed medical records.

At this point in the discussion, County Court had ruled that the missing photographs were not *Brady* material, but had not made a determination about the medical records. Mr. Brownlee's attorney continued to object that the proposed

remedies were inadequate in light of how the defense was hampered by the late disclosure of those records, and the court ordered an additional remedy:

Mr. Vitale: [] it is not only the lack of, you know, swelling or anything on the neck but, you know, they did a full exam of Mr. Short, and in those medical records which I got last week it shows that he had full range of motion. It appears to me as if there is no petechial hemorrhaging, nothing in the eyes. Again there is not a lot of other factors that would be consistent with the defense Mr. Brownlee wants to present, which is that this individual was not strangled to the point he was unconscious.

The Court: You can ask him all that.

Mr. Vitale: I don't believe that Mr. Short is going to even understand what petechial hemorrhaging is if I ask him that or even the the [sic] significance of that or lack of that, especially when it comes to something like this. The diagnosis was that he was alert and oriented, which would go to the lack -- which is consistent with the fact that oxygen was flowing to the brain which is inconsistent.

The Court: The records will come into evidence so you can refer to the records.

Mr. Vitale: I can't get them into evidence because they are not certified, and I haven't been able to -- and because of the late disclosure I haven't been able to subpoena anybody to testify as to those records.

The Court: Well, would there be any -- you can move to have those received in evidence and I can make that ruling and you can object, but I can rule that those records come in. Either that or I grant a continuance to issue a subpoena and get the records in pursuant to 45.18, I think, of the CPLR, I know that. So, I will rule that those records come in. So, you can cross-examine him in a manner you feel is going to be understood by him and we will go from there.

Mr. Vitale: Sure.

(T 244–245.) The court did not expressly rule that the medical records were *Brady* material or that their late disclosure constituted a *Brady* violation.

3. The photographs are located; defense counsel declines the remedy offered for the late-disclosed records.

The parties delivered opening statements and the first prosecution witness, Officer Buczek, was questioned and excused. Officer Samson, the driver of the van, was the second witness. After Samson's direct testimony had been completed but before defense counsel had cross-examined her, the color photographs of Short and Mr. Brownlee, presumed destroyed, were delivered to the courtroom; the prosecutor was "not aware of exactly where they came from" (T 316). Defense counsel agreed to cross-examine Samson first, then examine the photos over the lunch break, and he declined an offer to have Buczek recalled to the stand (T 317–318). After lunch, the court asked defense counsel whether there was "anything you wanted to bring to my attention" after having reviewed the photos, and counsel demurred (T 326).

Brandon Short was the third and final prosecution witness. On cross-examination, defense counsel showed him four photographs, which were received in evidence without objection (A 72–79); Short agreed that they were taken at Auburn, shortly after the incident on the Thruway, and that they depict "a scratch on the front of [his] lower neck" but no marks, bruising, swelling, or bloodshot eyes (T 348–351). Defense counsel also elicited testimony from Short about his physical

condition after the incident, without referencing the medical records or offering them in evidence (T 338-341). The only impairment Short claimed was "difficulty walking," which he experienced because Mr. Brownlee "lifted me up off the seat and he injured my back" (T 340-341).

The jury acquitted Mr. Brownlee of both crimes charged in the indictment, but convicted him of criminal obstruction of breathing or blood circulation (Penal Law § 121.11 [a]), a lesser included offense of strangulation in the second degree. After receiving the verdict, County Court promptly sentenced Mr. Brownlee to a year of jail time, the maximum term authorized, which he had already served in custody awaiting trial.

ARGUMENT

Point I: The Prosecution Violated Its *Brady* Obligations by Failing to Turn Over Medical Records Describing the Absence of Injury to Brandon Short Until Shortly Before Trial.

Brady v Maryland (373 US 83 [1963]) holds “that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution” (*id.* at 87). “To establish a *Brady* violation, a defendant must show that (1) the evidence is favorable to the defendant because it is either exculpatory or impeaching in nature; (2) the evidence was suppressed by the prosecution; and (3) prejudice arose because the suppressed evidence was material” (*People v Fuentes*, 12 NY3d 259, 263 [2009], *habeas corpus granted sub nom. Fuentes v Griffin*, 829 F3d 233 [2d Cir 2016]; *Strickler v Greene*, 527 US 263, 281–282 [1999]).

The application of this law to the facts presented here is straightforward. (1) Medical records describing the absence of injury to Brandon Short were favorable to the defense, both directly and as impeachment material. (2) The records were suppressed by the prosecution because they were not turned over until it was too late for defense counsel to effectively use them by securing the trial testimony of their author. (3) Mr. Brownlee was prejudiced by the untimely disclosure of the medical records, because there is at least a reasonable possibility that the jury, which

found him not guilty of both felony charges, would have voted a complete acquittal if his attorney had been able to call a medical witness to highlight the inconsistency between the absence of injury described in the records and Brandon Short's allegation that he was choked into unconsciousness for several minutes.

It would be impossible to fairly recount the parties' contentions and the trial court's rulings on Mr. Brownlee's *Brady* claims without reference to the photographs of Brandon Short, believed to be destroyed but finally obtained and turned over midway through trial. County Court's only explicit ruling on whether any *Brady* violation was committed at all pertained to the photos, not the medical records. This brief has accordingly described the course of events pertaining to the photos, and the argument that follows also addresses the court's *Brady* ruling on the photos for explanatory purposes.

To be clear, however, Mr. Brownlee is not asserting on this appeal that the mid-trial disclosure of the photographs constituted a *Brady* violation for which reversal is required. While the prosecution certainly had a duty under *Brady* to obtain and disclose them far earlier than it did, defense counsel's ability to use them in cross-examining Short dispelled the prejudice caused by their near-suppression, and so the third prong of the test is not satisfied. Mr. Brownlee's appellate argument is that the late disclosure of the medical records, only, constituted a *Brady* violation that prejudiced the defense and requires reversal of his conviction.

This brief first explains why the three components of a *Brady* violation are satisfied, then addresses remedies—why the partial remedy contemplated by the trial court for the records’ late disclosure was inadequate to protect Mr. Brownlee’s due process rights; why reversal of his conviction, at a minimum, is required; and why the indictment should be dismissed as well.

A. The Records Were Favorable to the Defense.

“Evidence is favorable to the accused if it either tends to show that the accused is not guilty or if it impeaches a government witness” (*People v Garrett*, 23 NY3d 878, 886 [2014] [quotation omitted]). “[T]he favorable tendency of impeachment evidence should be assessed without regard to the weight of the evidence as a whole,” and “impeachment evidence may be considered favorable to [a] defendant even if it is not material to the defendant’s case” (*id.* [quotations omitted]).

The medical records at issue here were favorable to Mr. Brownlee because they documented the absence of injury to Brandon Short immediately after he claimed to have been strangled. It does not matter, contrary to the prosecutor’s argument below, that Short denied sustaining any injury to his neck in a supporting deposition (T 231). Any reasonable person, shown a photograph taken a few hours after its subject claimed to have been “strangled with [a] seatbelt for almost three minutes” to the point that he became unconscious (T 227), would expect to see visible signs of injury to the neck. Similarly, it would be reasonable to expect a

medical evaluation performed in the immediate aftermath of such a serious assault to document its effects—an argument defense counsel made with specific medical examples (T 244–245).

County Court, in ruling that the photographs were not *Brady* material, speculated that “the edge of the [seatbelt] strap” could have been “placed flush against [Short’s] neck” in such a way that no visible marks would have been made (T 238–239). Even assuming this reasoning to be sound, it proves only that the photos were something less than irrefutable evidence of innocence, which is not the standard for determining whether a piece of evidence is favorable to the defendant. If Mr. Brownlee was accused of murder by poisoning, and a toxicology exam performed shortly after death revealed no evidence of any harmful substance, that report would not necessarily exonerate him—the prosecution might still be able to persuade a fact-finder that the victim was poisoned, even if their theory (like that of a seatbelt strangulation that leaves no trace) would not satisfy Occam’s razor.* But they could not seriously argue that the toxicology report would not have to be disclosed as *Brady* material. The court’s ability to imagine a scenario in which the photos would not conclusively establish Mr. Brownlee’s innocence does not displace their favorable character.

* “[T]he simplest of competing theories should often be preferred” (*United States v Santana-Dones*, 920 F3d 70, 83 [1st Cir 2019]).

Short's medical records are favorable to the defense because, as counsel argued, they "verif[y] that same thing" (T 228)—the absence of signs of injury one would expect the medical examination of a recently strangled person to reveal. The specific report in question, defense counsel claimed, "shows that he had full range of motion" and "no petechial hemorrhaging, nothing in the eyes" (T 244). "Having failed to dispute" this characterization of the report, "the People have impliedly conceded" its accuracy (*People v Wright*, 86 NY2d 591, 596 [1995]). And it would be more than reasonable for a fact-finder to conclude, from the absence of these indicia of injury, that Short was not strangled at all. Indeed, this Court has described similarly absent evidence as "compelling proof" that a defendant, convicted of falsely reporting an assault involving strangulation, "was not attacked as he had claimed" (*People v Barto*, 144 AD3d 1641, 1642 [4th Dept 2016] ["although defendant claimed to have been strangled with a ligature for approximately 30 seconds, there were no ligature marks on his neck and no petechial hemorrhage, which, according to the People's expert, one would expect to see on a person who had been attacked in that manner"]; accord *People v Oddone*, 22 NY3d 369, 374–377 [2013]).

B. The Records Were Suppressed.

The defendant's right to discover, and the prosecution's duty to disclose, extends to all favorable evidence that is "within the prosecution's custody,

possession, or control” (*Garrett*, 23 NY3d at 886)—and “[w]hat constitutes ‘possession or control’ for *Brady* purposes ‘has not been interpreted narrowly’ ” (*id.* at 886–887, quoting *People v Santorelli*, 95 NY2d 412, 421 [2000]). The Court of Appeals, like the Supreme Court, has imposed on “the individual prosecutor” “a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police” (*Garrett*, 23 NY3d at 887, quoting *Kyles v Whitley*, 514 US 419, 437 [1995]). “[W]hen police and other government agents investigate or provide information with the goal of prosecuting a defendant, they act as ‘an arm of the prosecution,’ and the knowledge they gather may reasonably be imputed to the prosecutor under *Brady*” (*Garrett*, 23 NY3d at 887, 888). The “ ‘duty to learn’ . . . has generally been held to include information that directly relates to the prosecution or investigation of the defendant’s case” (*id.* [collecting examples]).

The trial prosecutor in this case demonstrated that she was not aware of these principles. On the first day of trial, she told County Court that “the People were made aware of the existence” of the disputed evidence “the middle of last week by defense counsel” (T 231–232). In other words, she took the position that even after she had turned over voluminous discovery to the defense, less than one week before trial and ten months after indictment, she—and by extension “the People”—were not chargeable with knowledge of the contents of what she had produced until Mr. Brownlee’s attorney called her attention to it (T 10 [(T)he material that was

provided to counsel Wednesday of last week was all, to the best of my knowledge, *Rosario* material except for these photographs which, as he indicated, were not in any of the original police packages. So, I did not know they existed until the middle of last week.”)).

Garrett, Kyles, and other federal and New York cases make clear that this is no defense to a *Brady* claim. “[R]eliance . . . on the trial prosecutor’s lack of personal knowledge . . . is unavailing” (*Wright*, 86 NY2d at 598), because “negligent, as well as deliberate, nondisclosure may deny due process” (*id.*, quoting *People v Simmons*, 36 NY2d 126, 132 [1975]). The no-personal-knowledge argument is especially misplaced here because the prosecutor affirmatively represented that she could and would arrange access, upon request, to “photographs” and “other evidence . . . in the custody of the arresting or investigating agency” (A 55). If the photos, or indeed the medical report, had in fact been destroyed, Mr. Brownlee could persuasively have argued that the prosecution “prejudiced [his] ability to obtain the evidence before trial by misrepresenting that it had been preserved and would be available to him” (*People v Bryce*, 88 NY2d 124, 129 [1996]; *see id.* at 130 [rejecting prosecution’s counter-argument that “defendant’s inability to obtain the evidence was caused by his own delay”])). And it is irrelevant whether defense counsel availed himself of the opportunity to review discovery in the prosecutor’s office, because “the People unquestionably have a duty to disclose exculpatory material in their control” (*People*

v Brown, 67 NY2d 555, 559 [1986]), and that duty it is not satisfied merely by inviting defense counsel to try to find *Brady* material for himself within even a small file.

Nor can the prosecution defend their failure to timely produce this favorable evidence on the ground that “they themselves could not obtain” it from federal or out-of-state agencies or officials (*cf. Santorelli*, 95 NY2d at 422)—after all, they *did* in fact obtain it. And whereas there was at least some explanation for why the photographs were not turned over until trial was underway, the prosecutor never claimed, and there is no reason to believe, that the medical report describing the absence of injury to Brandon Short was held back from her by police investigators. She failed to turn it over as *Brady* material because she was unaware that it was favorable to the defense, and further unaware that it was her duty to learn that it was.

Finally, the records were suppressed for *Brady* purposes despite their disclosure several days prior to trial. Defense counsel persuasively explained why the late disclosure would prejudice his client: it was too late to arrange for the report’s author or another expert witness to testify at trial, and Short himself did not have the necessary basis of knowledge for counsel to establish through him, for instance, “what petechial hemorrhaging is” and whether one would expect to see it in a person who had recently been strangled to the point of unconsciousness for several minutes (T 228, 244–245).

In these circumstances, it cannot be said that Mr. Brownlee “[was] given a meaningful opportunity to use the allegedly exculpatory material to cross-examine the People’s witnesses or as evidence during his case” (*People v Cortijo*, 70 NY2d 868, 870 [1987]; cf. e.g. *People v Hines*, 132 AD3d 1385, 1385 [4th Dept 2015]). To hold that the records were not suppressed, on the theory that a hastily-prepared cross-examination of Short himself was all that was necessary to obtain their benefit, would unfairly minimize the ability of a zealous and capable defense counsel to present his or her own case. The proper analysis requires consideration of how valuable the records might have become if Mr. Brownlee’s attorney had been provided the opportunity “to develop this line of defense further by obtaining in time for trial a [medical] opinion that was obtainable only after the belated discovery of the withheld” records (*Fuentes v Griffin*, 829 F3d 233, 252 [2d Cir 2016]).

C. There Is a Reasonable Possibility That Mr. Brownlee Would Have Won a Complete Acquittal If the Records Had Been Turned Over in Time for His Attorney to Make Effective Use of Them.

The last of the three “essential components of a *Brady* violation” is that “prejudice must have ensued” from the suppression of favorable evidence (*Strickler*, 527 US at 280, 282). The prejudice component is also known as “materiality”: “prejudice arose because the suppressed evidence was material” (*Fuentes*, 12 NY3d at 263 [paraphrasing *Strickler*’s third prong]). “In New York, where a defendant makes a specific request for a document, the materiality element is established

provided there exists a 'reasonable possibility' that it would have changed the result of the proceedings" (*Garrett*, 23 NY3d at 891–892, quoting *Fuentes*, 12 NY3d at 263).

Although New York courts refer almost uniformly to "*Brady* material" and "*Brady* violations," the New York Constitution's protection of the defendant's due process right to disclosure of favorable evidence is not coterminous with that of the federal Constitution. The Supreme Court has held that the federal Due Process Clause mandates reversal of a conviction due to a *Brady* violation only if the defendant can show a "reasonable probability" of a different verdict—one "sufficient to undermine confidence in the outcome"—and that this standard is appropriate in (or at least "sufficiently flexible to cover") all cases, regardless whether the defendant made a specific request for the *Brady* material at issue, a general request for all material to which he was entitled under *Brady*, or no request at all (*United States v Bagley*, 473 US 667, 681–682 [1985]).

The Court of Appeals, however, has declined to adopt *Bagley* as a matter of state constitutional law, reasoning that "[w]here the defense itself has provided specific notice of its interest in particular material, heightened rather than lessened prosecutorial care is appropriate" (*People v Vilardi*, 76 NY2d 67, 77 [1990]). Applying a "reasonable possibility" standard in specific-request cases "encourages compliance" by prosecutors with their *Brady* obligations, while "a backward-

looking, outcome-oriented standard of review that gives dispositive weight to the strength of the People's case clearly provides diminished incentive for the prosecutor, in first responding to discovery requests, thoroughly to review files for exculpatory material, or to err on the side of disclosure where exculpatory value is debatable" (*id.*).

The facts of this case suggest that the prosecutor's incentive to properly identify and turn over *Brady* material was not felt as strongly as it should have been. Fortunately, application of the "reasonable possibility" standard compels a reversal that ought to underline the importance of heeding the *Vilardi* Court's warnings in future cases: "[S]uppression, or even negligent failure to disclose, is more serious in the face of a specific request in its potential to undermine the fairness of the trial" (76 NY2d at 77). Mr. Brownlee is entitled to the more favorable standard because his pre-trial motions specifically requested disclosure of any photographs "relating to" the incident or "used or made during the course of the investigation," as well as "[a]ny and all documents . . . detailing, in any fashion, the results of any physical or mental examination of the defendant . . . or any prospective witness" (A 24-25, 29; *see People v Scott*, 88 NY2d 888, 891 [1996] ["That the defense did not know the precise form of the document does not alter the fact that the request provided particularized notice of the information sought."])).

The jury's verdict—which acquitted Mr. Brownlee of the assault charge based

on his struggle with Officer Buczek, as well as the felony strangulation charge—shows that this was a very close case. Buczek, Samson, and Short all testified that Short was strangled into unconsciousness, but the jury rejected that testimony when it convicted Mr. Brownlee only of a lesser included offense that requires no degree of injury or impairment at all. This verdict “implies that it did not wholly believe or disbelieve” any of the People’s witnesses (*People v Hunter*, 11 NY3d 1, 4 [2008]). The Court of Appeals in *Hunter*, evaluating the proof in a mixed-verdict case, concluded that the suppressed *Brady* material “would have added a little more doubt to the jury’s view of the complainant’s allegations,” and that, even under the more demanding standard, it was “reasonably probable that a little more doubt would have been enough” (*id.* at 6).

The same is true here. The jury declined to credit the testimony of all three witnesses that Short lost consciousness. If it had also heard testimony from the person who evaluated Short that day, or another competent medical expert, about the indicia of injury that should have been, but were not, present, there is at least a reasonable possibility that its skepticism of the degree of injury would have extended just slightly further, to skepticism that Mr. Brownlee placed a seatbelt around Short’s neck for any length of time (*see Fuentes*, 829 F3d at 249–252).

D. The Conviction Should Be Reversed and the Indictment Dismissed.

When the prosecution’s failure to disclose material to which the defense is

entitled, under *Brady* or by statute, is discovered before a verdict has been rendered, “[i]t is for the trial court, in the exercise of its discretion, to choose a remedy” (*People v Williams*, 7 NY3d 15, 19 [2006]), and the trial court’s decision “is not to be disturbed unless it is determined that there has been an abuse of that discretion” (*People v Jenkins*, 98 NY2d 280, 284 [2002]). The “reasonable possibility” and “reasonable probability” standards, on the other hand, govern the determination by an appellate or post-conviction court whether reversal of a conviction already obtained is required to remedy a *Brady* violation.

Here, the trial court ruled that the photographs depicting the absence of injury to Brandon Short were not *Brady* material, but it also announced that it would give an adverse-inference instruction as a sanction for the photos’ (presumed) spoliation. When they were discovered after proof had already begun, the plan for the adverse-inference instruction seems to have been abandoned without comment or protest—it would not, after all, have made any sense to the jury. As for Short’s medical records, the trial court never made an express ruling whether they were *Brady* material, but it did order a remedy: it promised defense counsel that it would admit those records into evidence under the business records exception to the prohibition against hearsay, notwithstanding counsel’s observation that they were not admissible as business records because they were not certified.

The trial court’s proposed remedy of admitting the medical report regardless

of evidentiary obstacles was not sufficient to overcome the prejudice to Mr. Brownlee of its delayed disclosure. As defense counsel maintained from the outset, the exculpatory value of that document was not intrinsic, but required work on his part to be properly exploited. Only a qualified witness could provide testimony that would impress the significance of the report's findings upon the jury, and counsel had no realistic chance of securing that testimony at trial because the report was withheld from him for so long. The fact that he declined the trial court's offer to admit the report into evidence is an indication not that Mr. Brownlee suffered no prejudice, but that the remedy offered was of little value. Just as the prosecution "is entitled to prove its case free from any defendant's option to stipulate the evidence away" (*Old Chief v United States*, 519 US 172, 189 [1997]), the defendant has a right (of constitutional dimension, moreover) to present exculpatory and impeaching evidence in the manner his counsel deems most likely to sway a jury. "[T]he offering party's need for evidentiary richness and narrative integrity in presenting a case" (*id.* at 183) cannot be displaced by a court's instruction to present it some other way, so as to more conveniently remedy a problem of the opposing party's creation.

But this Court need not determine whether the trial court's choice of remedies for discovery (or possibly, combined discovery and *Brady*) violations was an abuse of discretion, because it can more accurately perform the "necessarily fact-specific" task of evaluating the impact of the disputed evidence on the course of proceedings

with “the benefit of a full trial record” (*People v Cardwell*, 78 NY2d 996, 998 [1991] [quotation omitted] [explaining why appellate courts should embrace, not reject, the benefit of hindsight in determining whether a defendant was prejudiced by the denial of a motion for severance])). Mr. Brownlee contends that application of the three-prong *Brady* test compels the conclusion that a *Brady* violation occurred, and if the Court agrees on all three points—that evidence that was both favorable and material was suppressed—it has no discretion to order a remedy short of reversal.

The Court should, however, exercise its discretion to order a further remedy: that the indictment be dismissed as well. Dismissal is appropriate here because Mr. Brownlee has already served the maximum jail sentence that could be imposed for conviction of criminal obstruction of breathing or blood circulation, a misdemeanor, which is all that remains of the indictment after the jury’s acquittals (*see e.g. People v Dreyden*, 15 NY3d 100, 104 [2010] [ordering reversal of conviction for criminal possession of a weapon in the fourth degree and dismissing accusatory instrument “since defendant has already served his sentence”])).

CONCLUSION

The judgment of conviction should be reversed and the indictment dismissed.

Dated: July 2019

Respectfully submitted,

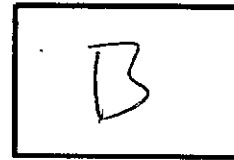


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Printing Specifications Statement (22 NYCRR § 1250.8 [j])

This brief was prepared on a computer using Microsoft Word. The typeface is 14-point Times New Roman, double-spaced (except for headings, footnotes, and block quotations). It contains 7,220 words, exclusive of those portions omitted from counting by 22 NYCRR § 1250.8 (f) (2).

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EXHIBIT

Description of this Exhibit: Brief for Respondent

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To be Argued by: Lisa Gray
Time Requested: 5 minutes

STATE OF NEW YORK
SUPREME COURT

APPELLATE DIVISION
FOURTH JUDICIAL DEPARTMENT

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-VS-

BENJAMIN BROWNLEE,

Defendant-Appellant.

BRIEF FOR RESPONDENT

Monroe County Indictment Number 2014-0476
Appellate Docket Number KA 15-01257

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QUESTION PRESENTED

Question 1: Did the People violate their obligation under *Brady v Maryland*?

Answer below: No.

PRELIMINARY STATEMENT

Appellant-Defendant Benjamin Brownlee ("defendant") was charged by way of indictment 0476/2014 with one count of assault in the second degree (Penal Law § 120.05 [3]) as to Correction Officer John Buczek and one count of strangulation in the second degree (Penal Law § 121.12) as to inmate Brandon Short (Appendix ["A"] 6-8). After a trial by jury in Monroe County Court (Ciaccio, J.), defendant was acquitted of both counts contained in the indictment and convicted on the lesser included offense of strangulation, criminal obstruction of breathing (Penal Law § 121.11 [0][A]) a class A misdemeanor (A 5, Jury Trial Minutes ["JT"] 430-431). The court thereafter sentenced defendant to one year in the Monroe County Jail, to be applied as time served (JT 434; A 5).

STATEMENT OF FACTS

On November 12, 2013, defendant and Brandon Short (both inmates with the New York State Department of Corrections) were being transported from the Wende Correctional Facility (located in Buffalo, New York) to the Marcy Correctional Facility (located in Utica, New York). Two others were present in the transport van: correction officers John Buczek and Janine Samson.

During the journey, there was an altercation between defendant and Short. Defendant began to strangle Short with a seatbelt while threatening to kill Short. Correction Officer Samson who was driving the van, pulled over to allow Correction Officer Buczek to intervene and separate the inmates.

Once Correction Officer Buczek gained control of defendant, the group made a detour to Auburn Correctional Facility to seek medical treatment. Correction Officer Buczek was treated for injuries to his hand sustained while breaking up the fight and Short was evaluated for any potential injuries he sustained during the time he lost consciousness and was unable to breathe while defendant held the seatbelt around his neck.

Six days before the trial, the prosecutor turned over all *Rosario* material including Short's medical records (JT 10, 241). After the jury had been sworn,

defense counsel objected to the "late disclosure of *Brady* material" which he claimed consisted of medical records from Auburn Correctional Facility pertaining to the evaluation and treatment of Short (JT 228, 230, 236). Despite his claim that the timing of the disclosure hampered his ability to subpoena the "person who actually treated [Short]" (JT 236), defense counsel did not seek an adjournment for that purpose.

Although the trial court was not convinced that the medical records at issue constituted *Brady* material (JT-239), in an effort to reach a compromise, the trial court ruled that Short's medical records, despite not being properly authenticated, could be received into evidence in defendant's case-in-chief (JT 245). The trial court also precluded any testimony describing injury to Short's neck (JT 239).

POINT I

Even if Short's medical records constituted *Brady* material, the timing of the disclosure did not prejudice defendant and accordingly, dismissal of the indictment is not warranted.

In his brief defendant claims that he did not receive Short's medical records far enough in advance of trial rendering them useless for a defense. Claiming that the medical records were *Brady* material, defendant contends that the indictment should be dismissed. The claim should be rejected because there was not proof that the medical records contained *Brady* material and the prosecutor turned over the medical records in advance of trial.

Defendant characterized the information contained in the medical records as *Brady* material because after reviewing the records prior to the People calling any witnesses, defense counsel argued that the records indicated a lack of injury to Short (JT 227-228). However, Short never complained of injury to his neck and instead described going unconscious and unable to breath due to being strangled with a seatbelt (JT 231, 331-332). Accordingly, defendant was charged with strangulation as to Short not assault. As the legislative history is laid out in *People v Figueroa*, 40 Misc 3d 2010 (Rye City Ct 2010), the purpose of enacting Article

121 of the Penal Law in 2010 was to address the lack of injury in cases where strangulation or choking leaves little or no visible injury in order to establish an assault.

In any event, for the medical records to be considered *Brady* material they must contain evidence favorable to the accused, and nowhere in the record is it explained how the medical record contained evidence favorable to the accused. Even assuming for the sake of argument that the medical records contained evidence favorable to the accused, a defendant's constitutional right to a fair trial is not violated when, as here, defendant was given a meaningful opportunity to use the allegedly exculpatory material to cross-examine the People's witnesses or as evidence during his case (*People v Cortijo*, 70 NY2d 868 [1987]; *People v Brown*, 67 NY2d 555, 559 [1987]; *People v Radesi*, 11 AD3d 1007 [4th Dept 2004]).

Defendant also claims that he would have a "complete acquittal" if the medical records had been turned over in time for defense counsel to make effective use of them. However, like strangulation, injury is not an element of criminal obstruction of breathing (*see* Penal Law 121.11 [a]). Thus, the jury was free to accept or reject Short's testimony that he lost consciousness and was unable to breathe while defendant strangled him with a seatbelt based on the eyewitness testimony of Correction Officer Buczek describing the strangulation

as well as the threats made by defendant during the strangulation. Ultimately, the jury chose to convict of the lesser included charge. Any alleged delay in disclosure of the medical records did not reasonably contribute to the guilty verdict (*People v Thompson*, 54 AD3d 975 [2nd Dept 2008]).

Here, the trial court precluded certain testimony and thereby eliminated any prejudice to defendant when it ordered that “[Short] doesn’t talk about any injuries to his neck. The only thing [the prosecution has] is loss of consciousness” (JT 239). Accordingly, the trial court employed its sound discretion in using a less drastic sanction than dismissal of the indictment (*People v Maldonado*, 122 AD3d 1379, 1380 [4th Dept 2014], *lv denied* 27 NY3d 1002 [2016]) (*internal citations omitted*).


CONCLUSION

The judgment of conviction should be affirmed.

Dated: August 22, 2019

Respectfully submitted,

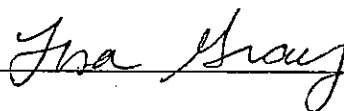
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Printing Specification Statement

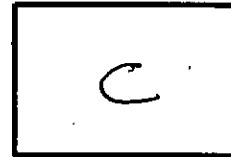
Pursuant to 22 NYCRR 1250.8 (j), I, Lisa Gray, by way of my signature above, certify that the word-processing system's word count used to prepare this brief indicates that 1,023 words were used in the body of the this brief. The brief is double spaced, and printed in Times New Roman typeface. The type size is 14 points in the text and headings.

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EXHIBIT

Description of this Exhibit: *Appellate Division, Fourth Judicial Department Memoranda and orders.*

Number of pages to this Exhibit: 2 pages.

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SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1239

KA 15-01257

PRESENT: WHALEN, P.J., SMITH, CURRAN, WINSLOW, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

BENJAMIN BROWNLEE, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (BENJAMIN L. NELSON OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (LISA GRAY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Christopher S. Ciaccio, J.), rendered June 3, 2015. The judgment convicted defendant upon a jury verdict of criminal obstruction of breathing or blood circulation.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him after a jury trial of criminal obstruction of breathing or blood circulation (Penal Law § 121.11 [a]). We affirm.

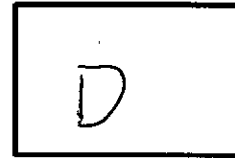
We reject defendant's contention that the prosecution committed a Brady violation by belatedly disclosing certain medical records that purportedly established the victim's lack of injuries following the alleged altercation with defendant. "To establish a Brady violation warranting a new trial, the defendant must show that (1) the evidence is favorable to the defendant because it is either exculpatory or impeaching in nature; (2) the evidence was suppressed by the prosecution; and (3) prejudice arose because the suppressed evidence was material" (People v Ulett, 33 NY3d 512, 515 [2019] [internal quotation marks omitted]; see Brady v Maryland, 373 US 83, 87 [1963]).

Here, the medical records documenting the victim's lack of injuries were favorable to defendant inasmuch as they "tend[ed] to show that [he was] not guilty" (People v Garrett, 23 NY3d 878, 886 [2014], rearg denied 25 NY3d 1215 [2015] [internal quotation marks omitted]). However, the People's failure to disclose the medical records until six days before trial did not constitute the suppression of those records because defendant was "afforded a meaningful opportunity to use [the records] to cross-examine the People's witnesses or as evidence-in-chief" (People v Burroughs, 64 AD3d 894,

898 [3d Dept 2009], lv denied 13 NY3d 794 [2009]; see People v Cortijo, 70 NY2d 868, 870 [1987]; cf. People v Carver, 114 AD3d 1199, 1199 [4th Dept 2014]]).

Moreover, even assuming, arguendo, that the prosecution's delay in disclosure did constitute suppression, we conclude that the records were not material because there was no " 'reasonable possibility' that the failure to disclose the medical records contributed to the verdict" (People v Vilardi, 76 NY2d 67, 77 [1990]; see generally People v Rong He, 34 NY3d 956, 959 [2019]; People v McCray, 23 NY3d 193, 198-199 [2014], rearg denied 24 NY3d 947 [2014]; People v Fuentes, 12 NY3d 259, 264-265 [2009], rearg denied 13 NY3d 766 [2009]]). Finally, we further conclude that any alleged Brady violation here is harmless. The People presented overwhelming evidence of defendant's guilt—namely, the consistent testimony of three eyewitnesses who described defendant's attack on the victim—and there is no reasonable possibility that any error contributed to the verdict (see People v Robinson, 267 AD2d 981, 981 [4th Dept 1999], lv denied 95 NY2d 838 [2000]]).

EXHIBIT COVER PAGE



EXHIBIT

Description of this Exhibit: *Permission to appeal to the court of Appeals.*

Number of pages to this Exhibit: 2 pages.

JURISDICTION: (Check only one)

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- ☐ Grand Jury



Office of the
Public Defender
Monroe County, New York

Adam J. Bello
County Executive

Timothy P. Donaher, Esq.
Public Defender

May 6, 2020

John P. Asiello, Esq.
Chief Clerk and Legal Counsel to the Court
New York Court of Appeals
20 Eagle Street
Albany, New York 12207

Re: *People v Benjamin Brownlee*
Monroe County Indictment No. 2014-0476
Criminal Leave Application

Dear Mr. Asiello:

By this letter, Benjamin Brownlee seeks permission to appeal to the Court of Appeals from the March 13, 2020 decision and order of the Appellate Division, Fourth Department, affirming a judgment rendered by Monroe County Court on June 3, 2015. The judgment convicted Mr. Brownlee upon a jury verdict of criminal obstruction of breathing or blood circulation (Penal Law § 121.11 [a]) and sentenced him to time served. There were no codefendants.

This application is timely because counsel for the respondent has not yet served me with a copy of the Appellate Division's order with notice of entry. No application for leave to appeal has been made to the Appellate Division.

Leave to appeal is sought on the ground that the Appellate Division erred in concluding that the People's failure to timely disclose favorable evidence to the defense prior to trial did not constitute suppression of that evidence, and therefore did not give rise to a *Brady* violation, because Mr. Brownlee was afforded a meaningful opportunity to use the late-disclosed evidence. Leave is also sought on the ground that the Appellate Division's two alternative determinations—that even if favorable evidence was suppressed, there was still no *Brady* violation because the evidence was not material, and that even if there was a *Brady* violation, it was harmless—are erroneous. These are questions of law reviewable by the Court of Appeals (CPL 470.05 [2], 470.35 [1]).

Further written argument in support of this application will be provided at a later date. I am also requesting an oral hearing on the application, in person or by telephone.

John P. Asiello, Esq.

May 6, 2020

-2-

Enclosed are copies of the Appellate Division decision and the briefs and appendix filed with that court, as well as proof of service of one copy of this letter on the Monroe County District Attorney's Office.

Very truly yours,

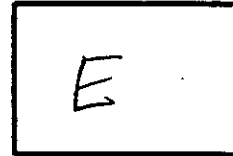
Encs.

pc: Lisa Gray, Esq.



Benjamin L. Nelson
Assistant Public Defender

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EXHIBIT

Description of this Exhibit: *Court of Appeal order as Denying to Leave.*

Number of pages to this Exhibit: 1 pages.

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State of New York Court of Appeals

BEFORE: HONORABLE PAUL G. FEINMAN

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

BENJAMIN BROWNLEE,

Appellant.

**ORDER
DENYING
LEAVE**

Appellant having applied for leave to appeal to this Court pursuant to Criminal Procedure
Law § 460.20 from an order in the above-captioned case;*

UPON the papers filed and due deliberation, it is

ORDERED that the application is denied.

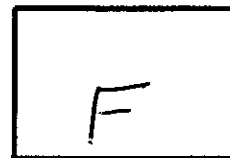
Dated: July 14, 2020



Associate Judge

*Description of Order: Order of the Appellate Division, Fourth Judicial Department, entered March 13, 2020, affirming a judgment of County Court, Monroe County, rendered June 3, 2015.

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EXHIBIT

Description of this Exhibit: *United States Supreme Court Order of Denying*

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☒ United States Supreme Court
- ☐ Grand Jury

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

February 22, 2021

Mr. Benjamin Justin Brownlee
Prisoner ID #BE 3069, B 8-222
P.O. Box 8800
Corcoran, CA 93212-8800

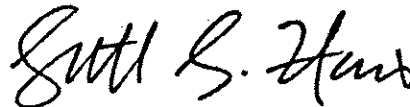
Re: Benjamin Justin Brownlee
v. New York
No. 20-6663

Dear Mr. Brownlee:

The Court today entered the following order in the above-entitled case:

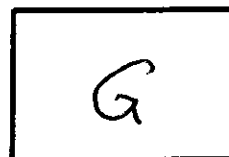
The petition for a writ of certiorari is denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott S. Harris", written in a cursive style.

Scott S. Harris, Clerk

EXHIBIT COVER PAGE



EXHIBIT

Description of this Exhibit: *Brief for Respondent for the Western District Court.*

Number of pages to this Exhibit: 79 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
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- ☐ State Circuit Court
- ☒ United States Supreme Court
- ☐ Grand Jury

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BENJAMIN J. BROWNLEE,

Petitioner,

v.

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent.

**NOTICE OF MOTION TO
DISMISS THE PETITION**

No. 6:21-cv-06423 (DGL)

PLEASE TAKE NOTICE that, under Federal Rule of Civil Procedure 12(b)(1) and upon the accompanying declaration, exhibits, and memorandum of law, respondent People of the State of New York will move this Court, on a date to be determined by the Court, to dismiss the above-captioned habeas corpus petition with prejudice, on the ground that petitioner Benjamin J. Brownlee fails to meet the jurisdictional requirement that he be in custody under the state court judgment he challenges. Respondent intends to file reply papers.

Dated: New York, New York
October 13, 2021

Respectfully submitted,

LETITIA JAMES

Attorney General of the State of New York
Attorney for Respondent

By: s/ Hannah Stith Long
HANNAH STITH LONG
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New York, NY 10005
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BENJAMIN J. BROWNLEE,

Petitioner,

v.

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent.

**DECLARATION IN SUPPORT
OF RESPONDENT'S MOTION
TO DISMISS THE PETITION**

No. 6:21-cv-06423 (DGL)

HANNAH STITH LONG, an attorney admitted to practice in the State of New York and before this Court, declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that:

1. I am an Assistant Attorney General, of counsel to Letitia James, Attorney General of the State of New York. I submit this declaration in support of respondent People of the State of New York's motion to dismiss the above-captioned habeas corpus petition with prejudice, on the ground that petitioner Benjamin J. Brownlee fails to meet the jurisdictional requirement that he be in custody under the state court judgment he challenges.

2. I or another member of the Attorney General's Office obtained copies of the records reproduced in the attached, consecutively paginated volume entitled "Exhibits" from the following sources: records relating to petitioner's April 20, 2006 judgment in *People v. Brownlee*, Supreme Court of the State of New York, New York County Ind. No. 3407/05, from the New York State Department of Corrections and

Community Supervision (DOCCS); records relating to petitioner's June 3, 2015 judgment in *People v. Brownlee*, County Court of the State of New York, Monroe County Ind. No. 3407/05, from the Monroe County District Attorney, the Appellate Division of the Supreme Court (Fourth Department), and the Monroe County Sheriff; records relating to petitioner's September 29, 2015 judgment in *People v. Brownlee*, County Court of the State of New York, Seneca County Ind. No. 14-076, from the Seneca County Court, the Seneca County Clerk, and the Seneca County Sheriff; records relating to petitioner's July 1, 2016 judgment in *People v. Brownlee*, Superior Court of the State of California, Sacramento County, Case No. 16FE004445, from the Sacramento County District Attorney; and records relating to petitioner's September 1, 2017 judgment in *People v. Brownlee*, Superior Court of the State of California, Sacramento County, Case No. 16FE018278, from the Sacramento County District Attorney.

3. Some of the records referenced in the paragraph 2 above and included in the attached Exhibits volume are printouts of electronic records kept by DOCCS and the Seneca County Sheriff, respectively. The attached certifications of DOCCS Assistant Counsel Marat Shkolnik and Sergeant Shawn Struzyk of the Seneca County Sheriff's Office authenticate the respective printouts.

4. Respondent and the Attorney General are unaware of any criminal judgments of conviction against petitioner apart from five judgments listed in paragraph 2 above. I have reviewed a criminal history report from the New York State Division of Criminal Justice Services for petitioner; it reflects no other criminal

judgments of conviction. The Oneida County District Attorney advised me that the Oneida County indictment referenced in the Monroe County case transcripts included in the attached Exhibits volume was dismissed in 2014 and sealed.

Dated: New York, New York
October 13, 2021

s/ Hannah Stith Long
HANNAH STITH LONG
Assistant Attorney General
28 Liberty Street
New York, NY 10005
(212) 416-8729
hannah.long@ag.ny.gov

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BENJAMIN J. BROWNLEE,

Petitioner,

v.

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent.

No. 6:21-cv-06423 (DGL)

**MEMORANDUM OF LAW IN SUPPORT OF
RESPONDENT'S MOTION TO DISMISS THE PETITION**

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Dated: October 13, 2021

ANDREW W. AMEND
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INTRODUCTION

This Court should dismiss this 28 U.S.C. § 2254 habeas corpus petition for lack of subject-matter jurisdiction. Petitioner Benjamin Justin Brownlee fails to meet the jurisdictional requirement that he be “in custody” under the state judgment he challenges, 28 U.S.C. §§ 2241(c)(3), 2254(a). The petition, filed in 2021, challenges a judgment for which petitioner was last in custody in 2015.

The judgment under attack is petitioner’s 2015 Monroe County conviction of Criminal Obstruction of Breathing or Blood Circulation, for which he received a 1-year sentence of imprisonment. At that time, he had no other sentences outstanding, and the 1-year sentence was fully satisfied by time served. Petitioner then proceeded to pursue a direct appeal, though he took more than four years to file his opening brief, with the result that the Appellate Division did not affirm the judgment of conviction until 2020. *See People v. Brownlee*, 181 A.D.3d 1265 (4th Dep’t), *lv. denied*, 35 N.Y.3d 1043 (2020), *cert. denied*, 141 S. Ct. 1414 (2021). By that time, petitioner had not been in custody on his conviction since the day his sentence was imposed in 2015. That fact defeats habeas jurisdiction here.

The rule that a prisoner serving consecutive sentences is “in custody” on each of them does not allow petitioner to avoid dismissal. Petitioner is currently in custody under a California judgment: a murder conviction and a sentence of life imprisonment without the possibility of parole. That sentence was imposed in 2017, more than two years after the 2015 Monroe County sentence fully expired. Thus, at the time petitioner commenced this action in 2021, he was not in custody under the challenged

2015 Monroe County judgment. Finally, the resulting absence of jurisdiction is not cured by the fact that petitioner satisfied the statute of limitation by filing within one year after the conclusion of direct appellate review of the judgment: whether the petition would be timely if the Court had jurisdiction to entertain it is irrelevant because the Court lacks jurisdiction in all events.

Therefore, the petition must be dismissed for lack of jurisdiction.

FACTUAL AND LEGAL BACKGROUND

Petitioner's relevant criminal history includes five judgments with sentences of imprisonment, three in New York followed by two in California: (A) a 2006 New York County assault conviction with a sentence of 3 to 9 years' imprisonment; (B) the June 2015 Monroe County conviction challenged here, with a sentence of 1 year's imprisonment; (C) a September 2015 Seneca County aggravated harassment conviction with a sentence of 6 months' imprisonment; (D) a 2016 California animal cruelty conviction with a sentence of 5 years' probation and 1 year's imprisonment; and (E) the 2017 California murder conviction with the sentence of life without parole that petitioner is currently serving. As explained below, not one of these sentences was imposed consecutively to any other sentence.¹ Each of the three New York sentences—including the June 2015 Monroe County conviction challenged in this

¹ Petitioner was also convicted and sentenced for robbery for the same attack resulting in his murder conviction; although the robbery sentence was imposed consecutively to the murder sentence, the robbery sentence was stayed pursuant to California double jeopardy rules (E 115 (citing Cal. Penal Code § 654(a)), and is not relevant here.

proceeding—fully expired before another sentence was imposed. Petitioner did not even commit the California murder for which he is presently in custody until all of his New York sentences had fully expired.

A. 2006 New York County Conviction of Assault

In 2005, at the age of 15, petitioner brutally attacked a stranger in a basement laundry room in New York County, without provocation or warning. *See* Docs. in Supp. of Ans. to Pet., *Brownlee v. California*, No. 19-cv-2524 (E.D. Cal. Aug. 25, 2020), ECF No. 14-3 at 76. He knocked her to the ground and used a cast on his arm to hit her repeatedly in the head and face, breaking her nose and causing other injuries. *Id.* He then flipped her onto her stomach and pulled down her pants. *Id.* The attack end at this point, because another person entered the laundry room, causing petitioner to flee. *Id.*

In New York State Supreme Court, petitioner pleaded guilty to Assault in the First Degree (Penal Law § 120.10(1)). (E 8-9.) On April 20, 2006, the court sentenced him to an indeterminate term of 3 to 9 years' imprisonment.² (E 7-9.)

² Under New York law in 2005, as now, a 15-year-old can in appropriate circumstances be held criminally responsible for certain serious violent crimes, including Assault in the First Degree. C.P.L. §§ 1.20(42), 180.75(2)–(6) (repealed and reenacted as C.P.L. § 722.20(2)–(6) in 2018, L. 2017 ch. 59, Part WWW); Penal Law §§ 10.00(18), 70.05. However, the statutory sentencing scheme differs in nature and severity from the statutory sentencing scheme for adult offenders. *Compare* Penal Law § 70.05 *with* Penal Law §§ 70.02, 70.04, 70.08.

The sentence commenced upon petitioner's transfer from local to New York State custody on April 24, 2006.³ See C.P.L. § 510.15(1); Exec. Law § 508(7); Penal Law § 70.30(1). Petitioner received credit for 254 days of detention prior to that date. (E 10); see Penal Law § 70.30(3). Thus, the maximum expiration date of his 3-to-9-year sentence was August 9, 2014. (E 10, 22.)

Petitioner remained incarcerated until the full expiration of his sentence (E 29-30) because he was denied parole (E 14, 23-26) and, on account of bad behavior, lost all of his good time (E 11-20, 25-26).⁴ He was released from state custody on August 8, 2014 (E 29-30), because August 9, 2014, the actual maximum expiration date, was a Saturday, see Corr. Law § 74.

Petitioner was not released into the community, however. Rather, he was transferred to local custody for pre-trial detention on pending charges arising from two crimes he had committed while in state custody: a 2013 Monroe County assault

³ Because of petitioner's age, his sentence commenced in the custody of the New York State Office of Children and Family Services (OCFS). See Exec. Law § 508(1); (see E 8, 10). In 2010, he was transferred to the custody of the New York State Department of Corrections and Community Supervision to serve the remainder of the sentence. (E 20-21, 27.) The fact that petitioner began serving the sentence in OCFS custody made no difference to the calculation of the sentence. See Exec. Law § 508(7).

⁴ An offender serving an indeterminate sentence of imprisonment is eligible for parole in the discretion of the Board of Parole, after completion of the minimum term of imprisonment. Penal Law § 70.40(1)(a)(i). Even if the offender is not paroled, he or she may still be released to community supervision prior to the expiration of his or her maximum term, if he or she has earned a good behavior time allowance, and has not forfeited it for bad behavior. Penal Law § 70.40(1)(b); Corr. Law § 803(1)(a), (b).

on another prisoner—which resulted in the judgment of conviction challenged here—and a 2014 Seneca County instance of harassment against a state corrections officer.⁵

B. 2015 Monroe County Conviction of Criminal Obstruction of Breathing or Blood Circulation

The present federal habeas petition challenges the 2015 judgment of conviction resulting from the 2013 attack by petitioner on another state prisoner. Both prisoners were in Monroe County being transported between state prisons when petitioner stated that he was going to “kill” the other prisoner and began choking him with a seatbelt. Docs. in Supp. of Ans. to Pet., *Brownlee*, No. 19-cv-2524 (E.D. Cal. Aug. 25, 2020), ECF No. 14-3 at 77. Petitioner refused orders to stop, and a corrections officer had to employ physical force to stop him. *Id.*

On May 21, 2014, Petitioner was indicted for Strangulation in the Second Degree (Penal Law § 121.12). (E 32.) He was also charged with Assault in the Second Degree (Penal Law § 120.05(3)) for injuring the intervening corrections officer. (E 32.)

Petitioner was arraigned on June 18, 2014. At that time, the Monroe County Court ordered that he be held in local custody upon his anticipated release from state custody on August 8, 2014. (E 37, 40.) The court later set bail (E 54), but petitioner

⁵ The transcripts for the Monroe County case make reference to a then-pending Oneida County indictment against petitioner. (E 45, 47, 49, 50, 60.) This indictment was dismissed later in 2014 and sealed pursuant to C.P.L. § 160.50 (Decl. ¶ 4), and has no bearing on the issues discussed in this memorandum.

did not post it, and he remained in local custody for the duration of the trial court proceedings (E 55-57, 64-65, 69-70, 75, 87, 92).

In 2015, petitioner was tried by jury, acquitted of the charged felonies, and convicted of the misdemeanor of Criminal Obstruction of Breathing or Blood Circulation (Penal Law § 121.11(a)), a lesser offense included in the felony of Strangulation in the Second Degree. (E 85-86, 90-91.)

On June 3, 2015, the court imposed a definite sentence of 1 year's imprisonment (E 89-91), which by statute equates to a sentence of 364 days, Penal Law § 70.15(1-a)(a). The court committed petitioner to the custody of the Monroe County Sheriff for execution of the sentence. (E 90.) As petitioner was already in the Sheriff's custody, the sentence commenced on the day it was imposed. *See* Penal Law § 70.30(2).

The 364-day sentence was fully satisfied by time served. Petitioner was statutorily entitled to credit for prior time spent in custody as a result of the Monroe County indictment—i.e., the period between his release from state custody on August 8, 2014, and his sentencing on the Monroe County conviction on June 3, 2015. *See* Penal Law § 70.30(3). Thus, petitioner was entitled to 298 days of credit for time served. (E 92, 94.) At the same time, the Sheriff granted petitioner 107 days off the sentence term for good behavior (E 93), thus reducing the term from 364 days to 257 days, *see* Corr. Law 804(1). That 257-day term was fully satisfied by the 298 days petitioner had already served. Therefore, his sentence fully expired on the day it was imposed.

Again, however, petitioner was not released into the community, because he was still facing the indictment for his 2014 Seneca County crime.

C. 2015 Seneca County Conviction of Aggravated Harassment

On June 10, 2014, about two months before petitioner's release from state custody upon the full expiration of his 2006 sentence, a Seneca County grand jury indicted him for Aggravated Harassment of an Employee by an Incarcerated Individual (Penal Law § 240.32), committed by throwing urine at a state corrections officer. (E 100.) The Seneca County Court ordered that petitioner be held in local custody for disposition of the indictment. (E 101.)

Thus, after petitioner's Monroe County sentence was imposed and fully expired on June 3, 2015 (see *supra* p. 6), he remained in local custody on account of his Seneca County case (see E 99, 101, 104).

On September 29, 2015, petitioner resolved the Seneca County case by pleading guilty to the misdemeanor offense of Attempted Aggravated Harassment of an Employee by an Incarcerated Individual (Penal Law §§ 110.00, 110.05(7), 240.32), for which he received a definite sentence of 6 months' imprisonment. (E 102-103.) Petitioner was committed to the custody of the Seneca County Sheriff for execution of the sentence. (E 102.) As petitioner was already in the Sheriff's custody, the sentence commenced on the day it was imposed. See Penal Law § 70.30(2).

Here too, the sentence was fully satisfied by time served. Petitioner was entitled to jail-time credit for all of the time he had been spent in custody on the Seneca County indictment after the expiration of his 2006 sentence on August 8,

2014, see Penal Law § 70.30(3).⁶ Thus, he was entitled to 417 days of jail-time credit (August 8, 2014, to September 29, 2015). In addition, the Sheriff granted him a good behavior-based reduction of the term from 6 months to 122 days (E 104); see Corr. Law § 804(1). Petitioner's 417 days of jail-time credit satisfied that sentence. Therefore, the sentence fully expired on the day it was imposed, September 29, 2015. This resulted in petitioner's unrestricted release into the community on that date, as he had fully served all of his sentences previously imposed and had no pending charges. He was not subject to any form of community supervision on any of his sentences either.

D. 2016 California Conviction of Animal Cruelty

Upon his release, petitioner immediately traveled to Sacramento County, California. Docs. in Supp. of Ans. to Pet., *Brownlee*, No. 19-cv-2524 (E.D. Cal. Aug. 25, 2020), ECF No. 14-6 at 133-134. There, five months later, he threw a puppy from a second story apartment down to the concrete ground below, stating that he would give it to the pound if he did not kill it. When police arrived, they observed that the puppy was bleeding and unable to walk. *Id.*, ECF No. 14-3 at 78.

Petitioner pleaded *nolo contendere* to the felony of intentionally and maliciously maiming, wounding, or killing a living animal (Cal. Penal Code § 597(a), (d)) and was sentenced by the Superior Court of California on July 1, 2016 (E 107).

⁶ Petitioner was entitled to that credit even though some of the same jail time had already been credited against his Monroe County sentence. See *Davis v. Arnette*, 44 N.Y.2d 877, 879 (1978); *Bridges v. Malcolm*, 44 N.Y.2d 875, 877 (1978).

That was more than one year after the June 3, 2015 full expiration of his sentence on the Monroe County conviction he now challenges, and more than nine months after the full expiration of all his previously imposed sentences.

The court imposed 5 years' probation with the condition that petitioner serve 364 days in jail (E 107), and gave him until September 16, 2016, to report to jail (E 106, 108).

E. 2017 California Conviction of Murder

One month after the imposition of petitioner's animal cruelty sentence, he strangled to death a stranger, an elderly homeless woman in Sacramento County, and took her identification and insurance cards. Docs. in Supp. of Ans. to Pet., *Brownlee*, No. 19-cv-2524 (E.D. Cal. Aug. 25, 2020), ECF Nos. 14-2 at 48, 14-3 at 71-74, 14-5 at 237-38, 244.

Petitioner was tried and convicted of first-degree murder (Cal. Penal Code § 187(a)) with the aggravating circumstance that he committed the crime while engaged in robbing the victim (Cal. Penal Code § 190.2(a)(17)(A)). (E 113.) At sentencing on September 1, 2017, the Superior Court of California found petitioner to be in violation of the terms of his probation on the 2016 animal cruelty conviction, and revoked and terminated his probation.⁷ (E 113); Docs. in Supp. of Ans. to Pet., *Brownlee*, No. 19-cv-2524 (E.D. Cal. Aug. 25, 2020), ECF Nos. 14-7 at 99. At the same

⁷ The court did not resentence petitioner on the animal cruelty conviction, evidently because the court was already imposing a sentence of life without parole.

time, the court imposed a sentence of life imprisonment without the possibility of parole on the murder conviction.⁸ (E 113); Docs. in Supp. of Ans. to Pet., Brownlee, No. 19-cv-2524 (E.D. Cal. Aug. 25, 2020), ECF No. 14-7 at 99. Petitioner is presently in custody serving that sentence, which was imposed more than two years after his Monroe County sentence had fully expired on June 3, 2015.

F. The Present Habeas Petition

Petitioner waited until 2019—four years after the 2015 Monroe County judgment and well into his 2017 California sentence of life without parole—to perfect a direct appeal from the Monroe County judgment. (E 95.) On that direct appeal, the Appellate Division of the Supreme Court, Fourth Department, affirmed the Monroe County judgment (E 96-97), and the New York Court of Appeals, by order of July 14, 2020, denied leave to appeal (E 98). People v. Brownlee, 181 A.D.3d 1265 (4th Dep't), lv. denied, 35 N.Y.3d 1043 (2020). On February 22, 2021, the United States Supreme Court denied petitioner a writ of certiorari. Brownlee v. New York, 141 S. Ct. 1414 (2021).

Petitioner filed the instant petition less than three months later, on May 14, 2021 (Proof of Service of Pet., ECF No. 1 at 78). The petition attacks his Monroe County judgment of June 3, 2015, for which the sentence fully expired on the same date. (Pet. at 2, ECF No. 1.) Petitioner claims that the prosecution violated its *Brady*

⁸ As noted above (at p. 2, note 1), petitioner was also convicted and sentenced for robbery, but that sentence was stayed pursuant to California double jeopardy rules (Cal. Penal Code § 654(a)). (E 115.)

obligations by not disclosing until shortly before trial the medical records of the fellow prisoner petitioner choked. (Pet. at 6, ECF No. 1.) For the reasons set forth below, the court lacks jurisdiction to consider this claim, because petitioner was not in custody under the 2015 Monroe County judgment when he filed the petition in 2021.

ARGUMENT

THE PETITION SHOULD BE DISMISSED FOR LACK OF JURISDICTION, BECAUSE PETITIONER COMMENCED THIS ACTION AFTER HE WAS NO LONGER "IN CUSTODY" UNDER THE CHALLENGED JUDGMENT

The Court lacks subject-matter jurisdiction over the petition because, when petitioner filed the petition in 2021, he was no longer "in custody" under the 2015 misdemeanor judgment that he challenges. His sentence in that case expired on the day it was imposed, and the sentence was not part of any string of consecutive sentences petitioner is currently serving. The fact that petitioner complied with the statute of limitations has no bearing on his failure to meet the independent jurisdictional requirement of being in custody. The petition therefore must be dismissed.

A federal court has jurisdiction to entertain a state prisoner's habeas petition only where the prisoner is "in custody in violation of" federal law. 28 U.S.C. §§ 2241(c)(3), 2254(a). This means that the prisoner must be in custody "under the conviction or sentence under attack" at the time the petition is filed. *Maleng v. Cook*, 490 U.S. 488, 490-91 (1989) (citing *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968)). Once the sentence imposed for a conviction has fully expired, the petitioner is no longer in custody under the judgment and cannot challenge the conviction under the

federal habeas statute. *Maleng*, 490 U.S. at 491-92. Here, the sentence for petitioner's 2015 Monroe County conviction fully expired on June 3, 2015. (See *supra* p. 6.) Yet he did not file the petition until 2021.

While it is true that a prisoner serving a string of consecutive sentences is considered to be in custody on each of them until all of them are served, *Garlotte v. Fordice*, 515 U.S. 39, 41 (1995); *Peyton v. Rowe*, 391 U.S. 54, 67 (1968), this principle does not apply here. Petitioner's 2015 Monroe County sentence was not imposed consecutively to any other sentence, nor was any other sentence imposed consecutively to it. Instead, each of his sentences was imposed after all of his previously imposed sentences had fully expired. Petitioner's 2006 New York County sentence expired in August 2014. (See *supra* p. 4.) His June 2015 Monroe County sentence expired the day it was imposed. (See *supra* p. 6.) Likewise, his September 2015 Seneca County sentence expired the day it was imposed. (See *supra* p. 8.) Finally, his 2016 California sentence was terminated by the court on the date his 2017 California sentence was imposed. (See *supra* p. 9 & note 7.) Thus, petitioner's 2015 Monroe County sentence was not part of any string of consecutive sentences, and a successful habeas attack on his 2015 Monroe County judgment would not advance his potential release date or otherwise affect the length of his present

custody. *Cf. Garlotte*, 515 U.S. at 43-44, 47. Federal habeas jurisdiction to review the 2015 Monroe County judgment therefore does not lie.⁹

Petitioner's compliance with the one-year statute of limitation of 28 U.S.C. § 2244(d)(1) cannot compensate for his failure to meet the in-custody requirement of 28 U.S.C. §§ 2241(c)(3) and 2254(a). The in-custody requirement is fundamental to federal habeas jurisdiction and has applied to state prisoners ever since federal habeas relief became available to them after the Civil War. *See* Act of Feb. 5, 1867, ch. 28, 14 Stat. 385 (making habeas relief available to any person "restrained of his or her liberty in violation of [federal law]"); *Rasul v. Bush*, 542 U.S. 466, 473 (2004); *Preiser v. Rodriguez*, 411 U.S. 475, 484-85 (1973); *Carafas*, 391 U.S. at 238. In contrast, the statute of limitation is an independent non-jurisdictional requirement added to the federal habeas statute by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). *See* AEDPA, § 101, 110 Stat. 1217; *Holland v. Florida*, 560 U.S. 631, 645 (2010). The statute of limitation, by its own terms, is an additional requirement for a person who is "in custody pursuant to the judgment of a State court." 28 U.S.C. § 2244(d)(1). Thus, petitioner's statute-of-limitation compliance does nothing to address the separate and distinct problem that he was not in custody

⁹ The 2017 California murder sentence was not statutorily enhanced on account of the prior 2015 conviction. *See* Docs. in Supp. of Ans. to Pet., *Brownlee*, No. 19-cv-2524 (E.D. Cal. Aug. 25, 2020), ECF No. 14-7 at 98-99. Even if the 2017 sentence had been a second or persistent felony offender sentence on account of his 2015 conviction, that circumstance would not place him "in custody" under the 2015 judgment while serving the 2017 sentence. *See Lackawanna Cty. Dist. Attorney v. Coss*, 532 U.S. 394, 401 (2001); *Maleng*, 490 U.S. at 491-93.

under the judgment he challenges at the time he filed this petition. Here, petitioner filed the petition in 2021, more than five years after his custody under the challenged 2015 judgment terminated. Therefore, the Court lacks jurisdiction to entertain the petition. *See Maleng*, 490 U.S. at 490-91.

CONCLUSION

For the reasons set forth above, the petition should be dismissed, and no certificate of appealability should be issued.

Dated: New York, New York
October 13, 2021

Respectfully submitted,

LETITIA JAMES
Attorney General
State of New York
Attorney for Respondent

By: /s/ Hannah Stith Long
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HANNAH STITH LONG
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of Counsel

**EXHIBITS TO DECLARATION IN SUPPORT OF
RESPONDENT'S MOTION TO DISMISS THE PETITION**

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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK: CRIMINAL TERM: PART: 73

-----x
THE PEOPLE OF THE STATE OF NEW YORK

Indictment No.:

3407/05

- against -

BENJAMIN BROWNLEE,

Assault 1st Degree

Defendant.

Calendar Call

-----x
111 Centre Street, DIVISION OF PAROLE
New York, New York 10013
April 20, 2006 RECEIVED

BEFORE:

APR 28 2008

HONORABLE MICHAEL CORRIERO, JUDGE
JUDSON CORP. FACILITY

Justice

APPEARANCES:

FOR THE PEOPLE:

ROBERT M. MORGENTHAU, ESQ.
District Attorney, New York County
One Hogan Place
New York, New York 10013
BY: MAXINE ROSENTHAL, ESQ.
Assistant District Attorney

MAY 15 2008

FOR THE DEFENDANT:

NEIGHBORHOOD DEFENDER SERVICE OF HARLEM
317 Lenox Avenue - 10th Floor
New York, New York 10027
BY: ELSIE CHANDLER, ESQ.

JACQUELINE RODRIGUEZ, CSR, RPR
Senior Court Reporter

Jacqueline Rodriguez, CSR, RPR
Senior Court Reporter

1 COURT CLERK: Calendar number 10, Benjamin
2 Brownlee, Indictment 3407 of 2005.

3 MS. ROSENTHAL: Maxine Rosenthal, for the
4 People.

5 MS. CHANDLER: Elsie Chandler, Neighborhood
6 Defender Service of Harlem, for Mr. Brownlee.

7 THE COURT: I'm sorry we had to put this
8 back on the calendar.

9 So the record is clear, when the defendant
10 pled guilty, he pled guilty to a non-juvenile offense
11 wherein he admitted sexually touching the victim in
12 this case.

13 Now, the law, as we understand it, and in
14 particular section 310.85 of the Criminal Procedure
15 Law, specifies that with respect to a verdict of
16 guilty, when a verdict of guilty is rendered with
17 respect to a crime for which the defendant is not
18 criminally responsible -- and that is the case with
19 non-JO offenses -- the verdict must be set aside and
20 shall be deemed a nullity.

21 At the time of the plea, the district
22 attorney, as well as the Court, wanted to be assured
23 that the defendant admitted to the sexual aspects of
24 this crime so that if he were subject to the
25 provisions relating to registration, he would be

Jacqueline Rodriguez, CSR, RPR
Senior Court Reporter

1 required to register.

2 As it turns out, the law doesn't account
3 for pleas that involve non-JO offenses; offenses
4 which, in effect, were and would be subject to the
5 jurisdiction only of the juvenile or family court.

6 And do you wish to make a statement with
7 respect to that?

8 MS. ROSENTHAL: Judge, it is true. I was
9 not aware or hadn't carefully looked into the CPL
10 provision that nullified that part of the statute. I
11 did go forward on this plea with the expectation that
12 the defendant would be a registered sex offender.

13 It does appear that neither of the offenses
14 that are in the indictment are, in fact, includable
15 or designated offenses. So, therefore, there's
16 nothing for the People to do in terms of asking that
17 the plea be vacated or anything like that.

18 I want to say that I did put in a call to
19 the Division of Criminal Justice Services to speak
20 with the attorneys who work for the New York State
21 sex offender registry whose job it is at DCJS to
22 oversee that area of the law.

23 Unfortunately, I was out of the office the
24 last few days. I've just spoken with the attorney
25 there. She tells me that she believes, as I do, that

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Senior Court Reporter

1 if, in fact, the plea is a nullity, that there's no
2 way for him to be registered on a non-conviction.

3 She is looking into it and has my cell
4 phone number and is going to give me a call back.

5 I cannot ask the Court to proceed at this
6 point because I understand that is the situation. If
7 I hear differently, I'll let the Court know.

8 THE COURT: Anything from Ms. Chandler
9 opposing any such registration given the age of the
10 defendant?

11 And also what was of major concern to the
12 Court is that this young man was given the
13 opportunity to receive the kind of counseling that
14 would help him not to be engaged in this kind of
15 behavior again.

16 MS. ROSENTHAL: Judge, because he pled to
17 assault in the first degree, that is still a charge
18 for which a DNA sample will be taken, and his DNA
19 will be put into the official DNA bank.

20 THE COURT: Yes.

21 Execute the sentence on the count to which
22 he pled guilty, which is Count 7.

23 Count 7 is declared a nullity and,
24 therefore, dismissed pursuant to Section 310.85 of
25 the Criminal Procedure Law, and should be so marked.

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Senior Court Reporter

1 COURT CLERK: So count 7 is going to be
2 dismissed?

3 THE COURT: Yes, but as a nullity. We have
4 to use those words, "as a nullity."

5 MS. CHANDLER: Judge, Benjamin wants me to
6 ask the Court if the Court could transfer him to
7 Horizon.

8 THE COURT: He's at Crossroads?

9 MS. CHANDLER: Yes. He's at Crossroads
10 now, and he wants to go to Horizon so that it's
11 easier and more convenient for his mother to visit
12 him.

13 THE COURT: I will call the Department of
14 Juvenile Justice today, and I will make that request.
15 Unless they feel for some specific security reason
16 that they can't do it, then I'll advise Ms. Chandler
17 of that.

18 MS. CHANDLER: Judge, I'd also like the
19 record to be clear that I've visited Benjamin several
20 times at Crossroads. I personally am very impressed
21 with the professionalism of the staff at Crossroads
22 and how they've handled him. And in particular an
23 officer named Morales.

24 I have to say that in my experience it is
25 rare to meet people who are as intelligent and

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Senior Court Reporter

1 empathetic.

2 THE COURT: Maybe he should stay there even
3 though it's difficult for his mother.

4 MS. CHANDLER: Benjamin is asking you for
5 his own reasons and I represent Benjamin.

6 I just would like the Court to be very
7 clear and to communicate to Crossroads that I, as a
8 professional, very much appreciate all the efforts
9 that they've made.

10 THE COURT: Yes, ma'am?

11 DEFENDANT'S MOTHER: I'm sorry.

12 It's an inconvenience, but they are nice to
13 him over there, and they're very understanding.

14 THE COURT: Okay.

15 DEFENDANT'S MOTHER: He's concerned about
16 me because I don't have a job right now, and I can
17 understand that. But it's okay because I go once a
18 week over there to see him.

19 MS. CHANDLER: Is that okay, Benjamin,
20 because your mom is saying that she will come visit
21 you at Crossroads for the time that you're there?

22 THE DEFENDANT: But I be having too much
23 problems.

24 THE COURT: All right. There are other
25 problems that affect him.

Jacqueline Rodriguez, CSR, RPR
Senior Court Reporter

1 All right. I will speak to the Department
2 of Juvenile Justice.

3 MS. CHANDLER: Okay.

4 THE COURT: And if I feel that they can do
5 it, I don't believe he will be there much longer.

6 Yes?

7 DEFENDANT'S MOTHER: I'm just concerned
8 about his medications. There's times when he's not
9 getting his medication. When he does not get his
10 medications, he tends to react. It needs to be
11 flowing through his system. And that's one of my
12 concerns.

13 THE COURT: I'll speak to the Department of
14 Juvenile Justice .

15 DEFT'S MOTHER: Thank you.

16 MS. CHANDLER: Thank you.

17 THE COURT: He's still sentenced to 3 to 9.

18 COURT CLERK: As a JO?

19 THE COURT: Yes.

20 oOo

21 I, Jacqueline Rodriguez, a Certified
22 Shorthand Reporter, in and for the State of New York,
23 do hereby certify that the foregoing transcript is
true and accurate to the best of my knowledge, skill,
and ability.

24 
Jacqueline Rodriguez, CSR, RPR
25 Senior Court Reporter

Jacqueline Rodriguez, CSR, RPR
Senior Court Reporter

UNIFORM SENTENCE & COMM SENT

STATE OF NEW YORK
SUPREME COURT: COUNTY OF NEW YORK

FILE: Michael Coriero

THE PEOPLE OF THE STATE OF NEW YORK

VS

Benjamin Brownlee

PART 13
J. Rodriguez
COURT REPORTER

Indictment/SCI No: 3407-2005

Indictment/SCI Charge(s): see attached

Date of offense: 6-27-05

M 90592945 28463112
SEX DOB NYSID Criminal Justice Tracking #

THE ABOVE NAMED DEFENDANT HAVING BEEN CONVICTED OF AND SENTENCED FOR (FELONY) (MISD) BY (PLEA) (VERDICT) FOR THE CRIME(S) OF:

Crime	Count	Law/Section & Subdivision	Hate/Terrorism	Min. Period	Max. Term	Definite/Determinate	Post Rel. Superv.
1. <u>Assault 1°</u>	<u>3</u>	<u>120.10(1) PL</u>		<u>3 (Three)</u>	<u>9 (Nine)</u>		
2. _____	_____	_____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____	_____	_____
4. _____	_____	_____	_____	_____	_____	_____	_____
5. _____	_____	_____	_____	_____	_____	_____	_____

☒ Convicted as a Juvenile Offender Age at time crime committed 15
☐ Convicted as an armed felon
The sentence(s) imposed herein shall run:
Concurrently with: _____
Consecutively to: _____

CONVICTION INCLUDES:
Weapon Type: dangerous instrument
Drug Type: _____
Covers: _____

☐ Adjudicated a YOUTHFUL OFFENDER
☐ EXECUTE AS A SENTENCE OF PAROLE SUPERVISION (CPL 410.91)
☐ Court certified the Defendant a Sex Offender (Cor. L 168-4)
☐ As a (second) (second drug) (second drug/prior vfo) (persistent) (violent) (second child sexual assault) felony offender
Mandatory Surcharge (paid) (not paid) waved \$ _____ Crime Victim Assistance Fee (paid) (not paid) waved \$ _____
Fine (paid) (not paid) \$ _____ Restitution (paid) (not paid) \$ _____
DNA Fee (paid) (not paid) waved \$ _____ Sex Offender Registration Fee (paid) (not paid) \$ _____
DWI/Other (paid) (not paid) \$ _____ Supplement Sex Off. Victim Fee (paid) (not paid) \$ _____

THE SAID DEFENDANT BE AND HEREBY IS COMMITTED TO THE CUSTODY OF THE:

NYS Department of Correctional Services (NYSDOCS) until released in accordance with the law, and being a person sixteen (16) years or older not presently in the custody of NYSDOCS (the County Sheriff) (New York City Department of Correction) is directed to deliver (him) (her) to the custody of NYSDOCS as provided in NYCRR part 103.

NYSDOCS until released in accordance with the law, and being a person sixteen (16) years or older and is presently in the custody of the NYSDOCS, said defendant shall remain in the custody of the NYSDOCS.

☒ S Office of Children and Family Services in accordance with the law being a person less than sixteen (16) years of age at the time the crime was committed.

The Department of Corrections of the City of New York

TO BE HELD UNTIL THE JUDGMENT OF THIS COURT IS SATISFIED.

REMARKS: _____

Amended Commitment Original Sentence 4-20-06 Thomas A. ...
Date Clerk of the Court

Order of Protection Attached YES NO
Theresa ... Remidge
Signature

ASC
File
12/2/05 (7/05)

UNIFORM SENTENCE & COMMITMENT

UCS-654(9/2010)

STATE OF NEW YORK

SUPREME COURT, COUNTY OF NEW YORK

PRESENT: HON. M. KAHN

Court Part: 44

Court Reporter: L. EISENBERG

Superior Ct. Case #: 3407-2005

The People of the State of New York -vs- BENJAMIN BROWNLEE 10A1145	
Defendant	
Male	0 2 8 4 6 3 1 1 2
SEX	D.O.B. NYSID NUMBER CRIMINAL JUSTICE TRACKING NUMBER

Accusatory Instrument Charge(s)	Law Section & Subdivision
1	
2	
3	
4	
Date(s) of Offense	06 / 27 / 05
To	

THE ABOVE NAMED DEFENDANT HAVING BEEN CONVICTED BY ☒ PLEA OR ☐ VERDICT, THE MOST SERIOUS OFFENSE BEING A ☒ FELONY OR ☐ MISDEMEANOR OR ☐ VIOLATION, IS HEREBY SENTENCED TO:

Crime	Count No.	Law § and Subdivision	SME, Hate or Terror	Minimum Term	Maximum Term	<input type="checkbox"/> Definite (select: D, M or Y) <input type="checkbox"/> Indeterminate (in years)**	Post-Release Supervision
1 ASSAULT 1	3	120.10 (1)		3 years	9 years		years
2				years	years		years
3				years	years		years
4				years	years		years
5				years	years		years

**NOTE: For each DETERMINATE SENTENCE imposed, a corresponding period of POST-RELEASE SUPERVISION MUST be indicated [PL § 70.45].

- ☐ Counts shall run CONCURRENTLY with each other ☐ Count(s) shall run CONSECUTIVELY to count(s)
- ☐ Sentence imposed herein shall run CONCURRENTLY with _____ and/or CONSECUTIVELY to _____
- ☐ A _____ period of (☐ PROBATION OR ☐ CONDITIONAL DISCHARGE) with an Ignition Interlock Device condition to run CONSECUTIVELY to any term of imprisonment imposed herein and to commence upon the defendant's release from imprisonment [PL § 60.21]
- ☒ Conviction includes: WEAPON TYPE: DANGEROUS INSTRUMENT and/or DRUG TYPE: _____
- ☒ Charged as a JUVENILE OFFENDER - age at time crime committed: 15 years
- ☐ Adjudicated a YOUTHFUL OFFENDER [CPL § 720.20]
- ☐ Execute as a sentence of PAROLE SUPERVISION [CPL § 410.91]
- ☐ Re-sentence as a PROBATION VIOLATOR [CPL § 410.70]
- ☐ Court certified the Defendant a SEX OFFENDER [Cor. 1 § 168-d]
- ☐ CASAT ordered [PL § 60.04(6)]
- ☐ SHOCK INCARCERATION ordered [PL § 60.04(7)]

As to: ☐ Second ☐ Second Violent ☐ Second Drug ☐ Second Drug w/prior VFO ☐ Predicate Sex Offender ☐ Predicate Sex Offender w/prior VFO ☐ Second Child Sexual Assault ☐ Persistent ☐ Persistent FELONY Violent OFFENDER

Paid	Not Paid	Deferred - court must file written order [CPL § 420.40(5)]		Paid	Not Paid	Deferred - court must file written order [CPL § 420.40(5)]	
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> Mandatory Surcharge	\$ 250	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> Crime Victim Assistance Fee	\$ 20
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Fine	\$	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Restitution	\$
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> DNA Fee	\$ 50	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Sex Offender Registration Fee	\$
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> DWI/Other	\$	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Supplemental Sex Off. Victim Fee	\$

THE SAID DEFENDANT BE AND HEREBY IS COMMITTED TO THE CUSTODY OF THE:

☒ NYS Department of Correctional Services (NYSDOCS) until released in accordance with the law, and being a person sixteen (16) years or older not presently in the custody of NYSDOCS (the County Sheriff) (New York City Dept. Of Correction) is directed to deliver the defendant to the custody of NYSDOCS as provided in 7 NYCRR Part 103.

☐ NYSDOCS until released in accordance with the law, and being a person sixteen (16) years or older and is presently in the custody of NYSDOCS, said defendant shall remain in the custody of the NYSDOCS.

☐ NYS Office of Children and Family Services in accordance with the law being a person less than sixteen (16) years of age at the time the crime was committed.

☐ NYC Department of Corrections - County Jail/Correctional Facility

TO BE HELD UNTIL THE JUDGMENT OF THIS COURT IS SATISFIED.

REMARKS

Commitment, Order of Protection & Pre-Sentence Report received by Correctional Authority as indicated
Official Name
Shield No

Pre-Sentence Investigation Report Attached: ☐ YES ☐ NO

Order of Protection Issued: ☐ YES ☐ NO

Order of Protection Attached: ☐ YES ☐ NO

09 / 20 / 13

Date

Norman Goodman

Clerk of the Court

☒ Amended Commitment:

Original Sentence Date 04 / 20 / 06

[Signature]
Signature

Senior Court Clerk

Title





JUVENILE OFFENDER INFORMATIONAL FORM

New York State
Office of
Children & Family
Services

TO:

J. Patrick Sullivan, Facility Director
Brookwood Secure Center

FROM:

Vera F. Vicino, Classification Analyst
Bureau of Classification and Movement

10A1145

George E. Pataki
Governor

RE:

Benjamin Brownlee

NYSID#: 2846311Z

DATE:

May 3, 2006

~~9029~~ 90592945

John A. Johnson
Commissioner

1. OCFS Case Number:

178064

2. Date of Birth:

3. Date sentenced:

4/20/06

4. County of Sentencing:

New York

5. Offense:

Assault 1

6. Minimum/Maximum:

3 - 9 years

7. Jail Time:

254 days

8. Date of Admission:

4/24/06

9. Parole Eligibility Date:

8/9/08

10. Conditional Release Date:

8/9/11

11. Maximum Expiration Date:

8/9/14

12. Initial Board Appearance:

6/08

Capital View Office Park

52 Washington Street
Rensselaer, NY 12144-2796

VLV

cc: D. Teeling - Division of Parole



An Equal Opportunity Employer



JUVENILE OFFENDER INFORMATIONAL FORM
ADJUSTED

New York State
Office of
Children & Family
Services

TO: F. Patrick Sullivan, Facility Director
Brookwood Secure Center

FROM: Vera F. Vieira, Classification Analyst
Bureau of Classification and Movement

10/11/45

George E. Pataki
Governor

RE: Benjamin Brownlee

NYSID#: ~~2846311-Z~~

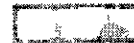
John A. Johnson
Commissioner

DATE: October 11, 2006

90592945

1. OCFS Case Number: 178064

2. Date of Birth:



3. Date sentenced: 4/20/06

Capital View Office Park

4. County of Sentencing: New York

52 Washington Street
Rensselaer, NY 12144-2796

5. Offense: Assault 1

6. Minimum/Maximum: 3 - 9 years

7. Jail Time: 254 days

8. Date of Admission: 4/24/06

9. Parole Eligibility Date: 8/9/08

10. Conditional Release Date: 8/9/11; 11/7/11*

11. Maximum Expiration Date: 8/9/14

12. Initial Board Appearance: 6/08

* 90 days Loss of Good Time per Facility Director's Proceeding held at Brookwood Secure Center on 9/5/06.

Affirmed by OCFS Associate Commissioner on 10/6/06.

VLV

cc: D. Teeling - Division of Parole



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New York State
Office of
Children & Family
Services

www.ocfs.state.ny.us

Eliot Spitzer
Governor

Gladys Carrión, Esq.
Commissioner

Capital View Office Park
52 Washington Street
Roseland, NY 12144

JUVENILE OFFENDER INFORMATIONAL FORM
ADJUSTED

TO: E. Patrick Sullivan, Facility Director
Brookwood Secure Center

FROM: Vera F. Vieira, Classification Analyst
Bureau of Classification and Movement

10,21145

RE: Benjamin Brownlee NYSID#: ~~2846311-2~~
90592945

DATE: January 29, 2008

1. OCFS Case Number: 105557 (178064)
2. Date of Birth:
3. Date sentenced: 4/20/06
4. County of Sentencing: New York
5. Offense: Assault 1
6. Minimum/Maximum: 3 - 9 years
7. Jail Time: 254 days
8. Date of Admission: 4/24/06
9. Parole Eligibility Date: 8/9/08
10. Conditional Release Date: 8/9/11; 11/7/11; 12/7/11*
11. Maximum Expiration Date: 8/9/14
12. Initial Board Appearance: 6/08

* 30 days Loss of Good Time per Facility Director's Proceeding held at Brookwood Secure Center on 12/6/07.

Affirmed by OCFS Associate Commissioner on 1/22/08.

VLV

cc: D. Teeling - Division of Parole



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David A. Paterson
Governor

Gladys Carrión, Esq.
Commissioner

Capital View Office Park
52 Washington Street
Rensselaer, NY 12144



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JUVENILE OFFENDER INFORMATIONAL FORM ADJUSTED

TO: E. Patrick Sullivan, Facility Director
Brookwood Secure Center

FROM: Vera F. Vieira, Classification Analyst
Bureau of Classification and Movement

RE: Benjamin Brownlee NYSID#: 2846311-Z-
905928-15

DATE: April 21, 2008

1. OCFS Case Number: 178064

2. Date of Birth: [REDACTED]

3. Date sentenced: 4/20/06

4. County of Sentencing: New York

5. Offense: Assault 1

6. Minimum/Maximum: 3 - 9 years

7. Jail Time: 254 days

8. Date of Admission: 4/24/06

9. Parole Eligibility Date: 8/9/08

10. Conditional Release Date: 8/9/11; 11/7/11; 12/7/11;
2/5/12*

11. Maximum Expiration Date: 8/9/14

12. Initial Board Appearance: 6/08

* 60 days Loss of Good Time per Facility Director's Proceeding held at Brookwood Secure Center on 3/14/08.
Affirmed by OCFS Associate Commissioner on 4/14/08.

VI.V

cc: A. Martinez - Division of Parole



JUVENILE OFFENDER INFORMATIONAL FORM
ADJUSTED

New York State
Office of
Children & Family
Services

www.ocfs.state.ny.us

David A. Paterson
Governor

Gladys Carrión, Esq.
Commissioner

Capital View Office Park
52 Washington Street
Selaer, NY 12144

TO: Bobby Smith, Facility Director
Goshen Secure Center

FROM: Vera F. Vicini, Classification Analyst
Bureau of Classification and Movement

10A1145

RE: Benjamin Brownlee NYSID#: 2846311-Z
90592945

DATE: October 23, 2008

1. OCFS Case Number: 178064
2. Date of Birth: [REDACTED]
3. Date sentenced: 4/20/06
4. County of Sentencing: New York
5. Offense: Assault 1
6. Minimum/Maximum: 3 - 9 years
7. Jail Time: 254 days
8. Date of Admission: 4/24/06
9. Parole Eligibility Date: 8/9/08
10. Conditional Release Date: 8/9/11; 11/7/11; 12/7/11;
2/5/12; 7/4/12*
11. Maximum Expiration Date: 8/9/14
12. Initial Board Appearance: 6/08; 5/10

* 150 days Loss of Good Time per Facility Director's Proceeding held at Goshen Secure Center on 8/21/08.
Affirmed by OCFS Associate Commissioner on 10/3/08.

VLV

cc: A. Martinez -- Division of Parole



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David A. Paterson
Governor

Gladys Carrión, Esq.
Commissioner

Capital View Office Park
Washington Street
Roseton, NY 12144

JUVENILE OFFENDER INFORMATIONAL FORM
ADJUSTED

TO: Bobby Smith, Facility Director
Goshen Secure Center

FROM: Vera F. Vicari, Classification Analyst
Bureau of Classification and Movement

10A1145

RE: Benjamin Brownlee NYSID#: 2846311-Z
90592845

DATE: October 23, 2008

1. OCFS Case Number: 178064
2. Date of Birth:
3. Date sentenced: 4/20/06
4. County of Sentencing: New York
5. Offense: Assault 1
6. Minimum/Maximum: 3 - 9 years
7. Jail Time: 254 days
8. Date of Admission: 4/24/06
9. Parole Eligibility Date: 8/9/08
10. Conditional Release Date: 8/9/11; 11/7/11; 12/7/11;
2/5/12; 7/4/12; 9/2/12*
11. Maximum Expiration Date: 8/9/14
12. Initial Board Appearance: 6/08; 5/10

* 60 days Loss of Good Time per Facility Director's Proceeding held at Goshen Secure Center on 9/11/08.

Affirmed by OCFS Associate Commissioner on 10/17/08.

VLV

cc: A. Martinez - Division of Parole



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JUVENILE OFFENDER INFORMATIONAL FORM
ADJUSTED

New York State
Office of
Children & Family
Services

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David A. Paterson
Governor

Gladys Carrión, Esq.
Commissioner

Capital View Office Park
Washington Street
Hempstead, NY 11544

TO: Bobby Smith, Facility Director
Goshen Secure Center

FROM: Vera E. Vicini, Classification Analyst
Bureau of Classification and Movement

RE: Benjamin Brownlee

NYSID#: 2846311-Z
90592945

DATE: October 31, 2008

1. OCFS Case Number: 178064
2. Date of Birth:
3. Date sentenced: 4/20/06
4. County of Sentencing: New York
5. Offense: Assault 1
6. Minimum/Maximum: 3 - 9 years
7. Jail Time: 254 days
8. Date of Admission: 4/24/06
9. Parole Eligibility Date: 8/9/08
10. Conditional Release Date: 8/9/11; 11/7/11; 12/7/11;
2/5/12; 7/4/12; 9/2/12;
11/1/12*
11. Maximum Expiration Date: 8/9/14
12. Initial Board Appearance: 6/08; 5/10

* 60 days Loss of Good Time per Facility Director's Proceeding held at Goshen Secure Center on 8/21/08.

Affirmed by OCFS Associate Commissioner on 10/27/08.

VLV

cc: A. Martinez - Division of Parole



An Equal Opportunity Employer



JUVENILE OFFENDER INFORMATIONAL FORM
ADJUSTED

New York State
Office of
Children & Family
Services

www.ocfs.state.ny.us

David A. Paterson
Governor

Gladys Carrón, Esq.
Commissioner

Capital View Office Park
52 Washington Street
Rensselaer, NY 12144

TO: Bobby Smith, Facility Director
Goshen Secure Center


FROM: Vera F. Vieira, Classification Analyst
Bureau of Classification and Movement

RE: Benjamin Brownlee

DATE: December 5, 2008

NYSID#: 2846311-Z

90592945

1. OCPS Case Number: 178064
2. Date of Birth: 
3. Date sentenced: 4/20/06
4. County of Sentencing: New York
5. Offense: Assault 1
6. Minimum/Maximum: 3 - 9 years
7. Jail Time: 254 days
8. Date of Admission: 4/24/06
9. Parole Eligibility Date: 8/9/08
10. Conditional Release Date: 8/9/11; 11/7/11; 12/7/11;
2/5/12; 7/4/12; 9/2/12;
11/1/12; 11/11/12*
11. Maximum Expiration Date: 8/9/14
12. Initial Board Appearance: 6/08; 5/10

* 10 days Loss of Good Time per Facility Director's Proceeding held at Goshen
Secure Center on 10/22/08.
Affirmed by OCPS Associate Commissioner on 12/2/08.

VLV

cc: A. Martinez - Division of Parole



Equal Opportunity Employer



New York State
Office of
Children & Family
Services

www.ocfs.state.ny.us

David A. Paterson
Governor

Gladys Carrión, Esq.
Commissioner

Capital View Office Park
12 Washington Street
Rensselaer, NY 12144

JUVENILE OFFENDER INFORMATIONAL FORM
ADJUSTED

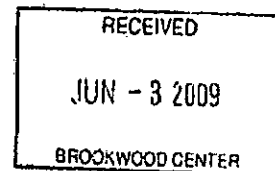
TO: E. Patrick Sullivan, Facility Director
Brookwood Secure Center

FROM: Vera F. Vicari, Classification Analyst
Bureau of Classification and Movement

RE: Benjamin Brownlee

NYSID#: 2846311-2
90592943

DATE: May 29, 2009



10A1145

1. OCFS Case Number: 178064
2. Date of Birth:
3. Date sentenced: 4/20/06
4. County of Sentencing: New York
5. Offense: Assault 1
6. Minimum/Maximum: 3 - 9 years
7. Jail Time: 254 days
8. Date of Admission: 4/24/06
9. Parole Eligibility Date: 8/9/08
10. Conditional Release Date: 8/9/11; 11/7/11; 12/7/11;
2/5/12; 7/4/12; 9/2/12;
11/1/12; 11/11/12; 1/10/13*
11. Maximum Expiration Date: 8/9/14
12. Initial Board Appearance: 6/08; 5/10

* 60 days Loss of Good Time per Facility Director's Proceeding held at Goshen Secure Center on 5/5/09.

Affirmed by OCFS Associate Commissioner on 5/26/09.

VLV

cc: A. Martinez - Division of Parole



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New York State
Office of
Children & Family
Services

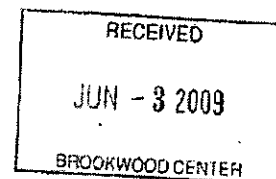
www.ocfs.state.ny.us

David A. Paterson
Governor

Gladys Carrión, Esq.
Commissioner

Capital View Office Park
52 Washington Street
Rensselaer, NY 12144

JUVENILE OFFENDER INFORMATIONAL FORM
ADJUSTED




TO: E. Patrick Sullivan, Facility Director
Brookwood Secure Center

FROM: Vera F. Vieira, Classification Analyst
Bureau of Classification and Movement

10A1145

RE: Benjamin Brownlee NYSID#: 2846341-Z
90592945

DATE: May 29, 2009

1. OCFS Case Number: 178064
2. Date of Birth: 
3. Date sentenced: 4/20/06
4. County of Sentencing: New York
5. Offense: Assault 1
6. Minimum/Maximum: 3 - 9 years
7. Jail Time: 254 days
8. Date of Admission: 4/24/06
9. Parole Eligibility Date: 8/9/08
10. Conditional Release Date: 8/9/11; 11/7/11; 12/7/11;
2/5/12; 7/4/12; 9/2/12;
11/1/12; 11/11/12; 1/10/13; 3/11/13*
11. Maximum Expiration Date: 8/9/14
12. Initial Board Appearance: 6/08; 5/10

* 60 days Loss of Good Time per Facility Director's Proceeding held at Goshen Secure Center on 4/29/09.
Affirmed by OCFS Associate Commissioner on 5/26/09.

V.I.V

cc: A. Martinez -- Division of Parole



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New York State
Office of
Children & Family
Services

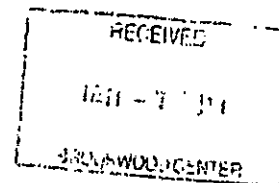
www.ocfs.state.ny.us

David A. Paterson
Governor

Gladys Corrión, Esq.
Commissioner

Capital View Office Park
32 Washington Street
Rensselaer, NY 12144

JUVENILE OFFENDER INFORMATIONAL FORM
ADJUSTED



10A1145

TO: H. Patrick Sullivan, Facility Director
Brookwood Secure Center

FROM: Vera F. Vicira, Classification Analyst
Bureau of Classification and Movement

RE: Benjamin Brownlee

NYSID#: ~~2846311-2-~~
965 92945

DATE: January 5, 2010

1. OCFS Case Number: 178064
2. Date of Birth:
3. Date sentenced: 4/20/06
4. County of Sentencing: New York
5. Offense: Assault 1
6. Minimum/Maximum: 3 - 9 years
7. Jail Time: 254 days
8. Date of Admission: 4/24/06
9. Parole Eligibility Date: 8/9/08
10. Conditional Release Date: 8/9/11; 11/7/11; 12/7/11;
2/5/12; 7/4/12; 9/2/12;
11/1/12; 11/11/12; 1/10/13; 3/11/13;
4/10/13*
11. Maximum Expiration Date: 8/9/14
12. Initial Board Appearance: 6/08; 5/10

* 30 days Loss of Good Time per Facility Director's Proceeding held at Brookwood Secure Center on 11/12/09.
Affirmed by OCFS Associate Commissioner on 12/30/09.

VIV

cc: A. Martinez - Division of Parole



An Equal Opportunity Employer

09/23/21 CCNSMXS RECEPTION/CLASSIFICATION SYSTEM KRCLMHZ
 16:04:09 C999W410 INQUIRY INDEX
 DIN: 10A1145 NAME: BROWNLEE, BENJAMIN NYSID: 09059294J
 DATE COMP RECORDS: 1 - 11 of 11 DATE RECEIVED: 03/12/2010
 A COMPUTATION TYPE DATE TIME USER
 _ U01 UPDATE PE, TRD, GRAD DATES AND PH DATE/TYPE 05/22/2014 09:00A C370NSC
 _ 92 UPDATE OF P.E., P.H. AND/OR T.A.C. INFO 05/25/2012 01:33P C000KLL
 _ 91 LOST GOOD TIME ADJUSTMENT 05/09/2011 C010SLQ
 _ 92 UPDATE OF P.E., P.H. AND/OR T.A.C. INFO 02/14/2011 C010SLQ
 _ 92 UPDATE OF P.E., P.H. AND/OR T.A.C. INFO 02/14/2011 C010SLQ
 _ 92 UPDATE OF P.E., P.H. AND/OR T.A.C. INFO 05/17/2010 C240EMD
 _ 92 UPDATE OF P.E., P.H. AND/OR T.A.C. INFO 03/15/2010 C240KDH
 _ 92 UPDATE OF P.E., P.H. AND/OR T.A.C. INFO 03/15/2010 C240KDH
 _ 01 BASIC INDETERMINATE 03/12/2010 C240KDH
 _ 01 BASIC INDETERMINATE 03/12/2010 C240KDH
 _ 01 BASIC INDETERMINATE 03/12/2010 C240KDH

ACTION: X SELECT P PRINT

*** END OF HISTORY DATA FOR THIS DIN ***

<ENTER> (CONTINUE) <PF3> EXIT <PF6> COMMENTS <PF7> BKWD <PF8> FWD
 <CLEAR> EXIT(SYSTEM) <PF9> PRINT ALL

DIN 10A1145 BROWNLEE, BENJAMIN DATE COMPUTATION/ENTRY KRCLM40
 LAST COMP. 01BASIC INDETERMINATE DONE 03/12/2010 BY C240KDH
 DATE RECEIVED 2006 04 24 TIME TO SERVE (MINIMUM) 002 03 16
 MINIMUM TERM 003 00 00 TIME TO SERVE (MAXIMUM) 008 03 16
 MAXIMUM TERM 009 00 00 TIME OWED (MINIMUM)
 JAIL TIME (DAYS) 0254 TIME OWED (MAXIMUM)
 DATE SENTENCED PAROLE JAIL TIME (DAYS)
 ORIG. MAX. EXP. DATE NET TIME OWED
 DATE DECLARED DELINQUENT LIMITED CREDIT TIME POSSIBLE 00 06 00
 DATE RETURNED SUPPLEMENTAL MERIT TIME POSS.
 ORIG. DATE RECEIVED MERIT TIME POSSIBLE
 DATE RELEASED GOOD TIME ADJUSTMENT
 DATE FAILED TO RETURN GOOD TIME POSSIBLE 003 00 00
 DATE ESCAPED LIMITED CREDIT TIME DATE 2011 02 09
 ORIG. PAR. ELIG. DATE SUPPLEMENTAL MERIT ELIG DT
 OTHER STATE SENT. DATE MERIT ELIGIBILITY DATE
 DATE DISCHARGED PAROLE ELIGIBILITY DATE 2008 08 09
 DATE REAFFIRMED PAROLE HEARING DATE/TYPE 2010 04 PIE
 PRIOR TIME CREDIT TENTATIVE RELEASE DATE
 MEPS MAXIMUM EXPIRATION DATE 2014 08 09
 PAROLE BOARD DISCHARGE CONDITIONAL RELEASE DATE 2011 08 09
 PRS PRS ME T.A.C. DATE/TYPE 2011 04 INIT
 REMARKS
 <PF3>EXIT <PF4>RETURN <PF6>COMMENTS <PF10>PRINT <CLEAR>EXIT

DIN 10A1145 BROWNLEE, BENJAMIN		DATE COMPUTATION/ENTRY	KRCLM40
LAST COMP. 01BASIC INDETERMINATE		DONE 03/12/2010 BY C240KDH	
DATE RECEIVED	2006 04 24	TIME TO SERVE (MINIMUM)	002 03 16
MINIMUM TERM	003 00 00	TIME TO SERVE (MAXIMUM)	008 03 16
MAXIMUM TERM	009 00 00	TIME OWED (MINIMUM)	
JAIL TIME (DAYS)	0254	TIME OWED (MAXIMUM)	
DATE SENTENCED		PAROLE JAIL TIME (DAYS)	
ORIG. MAX. EXP. DATE		NET TIME OWED	
DATE DECLARED DELINQUENT		LIMITED CREDIT TIME POSSIBLE	00 06 00
DATE RETURNED		SUPPLEMENTAL MERIT TIME POSS.	
ORIG. DATE RECEIVED		MERIT TIME POSSIBLE	
DATE RELEASED		GOOD TIME ADJUSTMENT	
DATE FAILED TO RETURN		GOOD TIME POSSIBLE	003 00 00
DATE ESCAPED		LIMITED CREDIT TIME DATE	2011 02 09
ORIG. PAR. ELIG. DATE		SUPPLEMENTAL MERIT ELIG DT	
OTHER STATE SENT. DATE		MERIT ELIGIBILITY DATE	
DATE DISCHARGED		PAROLE ELIGIBILITY DATE	2008 08 09
DATE REAFFIRMED		PAROLE HEARING DATE/TYPE	2010 04 PIE
PRIOR TIME CREDIT		TENTATIVE RELEASE DATE	
MEPS		MAXIMUM EXPIRATION DATE	2014 08 09
PAROLE BOARD DISCHARGE		CONDITIONAL RELEASE DATE	2011 08 09
PRS	PRS ME	T.A.C. DATE/TYPE	2011 04 INIT
REMARKS 550 DAYS LGT @OCFS			
<PF3>EXIT <PF4>RETURN <PF6>COMMENTS <PF10>PRINT <CLEAR>EXIT			

DIN 10A1145 BROWNLEE, BENJAMIN		DATE COMPUTATION/ENTRY	KRCLM40
LAST COMP. 01BASIC INDETERMINATE		DONE 03/12/2010 BY C240KDH	
DATE RECEIVED	2006 04 24	TIME TO SERVE (MINIMUM)	002 03 16
MINIMUM TERM	003 00 00	TIME TO SERVE (MAXIMUM)	008 03 16
MAXIMUM TERM	009 00 00	TIME OWED (MINIMUM)	
JAIL TIME (DAYS)	0254	TIME OWED (MAXIMUM)	
DATE SENTENCED		PAROLE JAIL TIME (DAYS)	
ORIG. MAX. EXP. DATE		NET TIME OWED	
DATE DECLARED DELINQUENT		LIMITED CREDIT TIME POSSIBLE	00 06 00
DATE RETURNED		SUPPLEMENTAL MERIT TIME POSS.	
ORIG. DATE RECEIVED		MERIT TIME POSSIBLE	
DATE RELEASED		GOOD TIME ADJUSTMENT	
DATE FAILED TO RETURN		GOOD TIME POSSIBLE	003 00 00
DATE ESCAPED		LIMITED CREDIT TIME DATE	2011 02 09
ORIG. PAR. ELIG. DATE		SUPPLEMENTAL MERIT ELIG DT	
OTHER STATE SENT. DATE		MERIT ELIGIBILITY DATE	
DATE DISCHARGED		PAROLE ELIGIBILITY DATE	2008 08 09
DATE REAFFIRMED		PAROLE HEARING DATE/TYPE	2010 04 PIE
PRIOR TIME CREDIT		TENTATIVE RELEASE DATE	
MEPS		MAXIMUM EXPIRATION DATE	2014 08 09
PAROLE BOARD DISCHARGE		CONDITIONAL RELEASE DATE	2011 08 09
PRS	PRS ME	T.A.C. DATE/TYPE	2011 04 INIT
REMARKS 550 DAYS LGT @OCFS			
<PF3>EXIT <PF4>RETURN <PF6>COMMENTS <PF10>PRINT <CLEAR>EXIT			

DIN 10A1145 BROWNLEE, BENJAMIN DATE COMPUTATION/ENTRY KRCLM40
 LAST COMP. 92UPDATE OF PE, PH, TAC INFO DONE 03/15/2010 BY C240KDH
 DATE RECEIVED 2006 04 24 TIME TO SERVE (MINIMUM) 002 03 16
 MINIMUM TERM 003 00 00 TIME TO SERVE (MAXIMUM) 008 03 16
 MAXIMUM TERM 009 00 00 TIME OWED (MINIMUM)
 JAIL TIME (DAYS) 0254 TIME OWED (MAXIMUM)
 DATE SENTENCED PAROLE JAIL TIME (DAYS)
 ORIG. MAX. EXP. DATE NET TIME OWED
 DATE DECLARED DELINQUENT LIMITED CREDIT TIME POSSIBLE 00 06 00
 DATE RETURNED SUPPLEMENTAL MERIT TIME POSS.
 ORIG. DATE RECEIVED MERIT TIME POSSIBLE
 DATE RELEASED GOOD TIME ADJUSTMENT
 DATE FAILED TO RETURN GOOD TIME POSSIBLE 003 00 00
 DATE ESCAPED LIMITED CREDIT TIME DATE 2011 02 09
 ORIG. PAR. ELIG. DATE SUPPLEMENTAL MERIT ELIG DT
 OTHER STATE SENT. DATE MERIT ELIGIBILITY DATE
 DATE DISCHARGED PAROLE ELIGIBILITY DATE 2008 08 09
 DATE REAFFIRMED PAROLE HEARING DATE/TYPE 2010 05 REAP
 PRIOR TIME CREDIT TENTATIVE RELEASE DATE
 MEPS MAXIMUM EXPIRATION DATE 2014 08 09
 PAROLE BOARD DISCHARGE CONDITIONAL RELEASE DATE 2011 08 09
 PRS PRS ME T.A.C. DATE/TYPE 2011 04 INIT
 REMARKS 550 DAYS LGT @OCFS
 <PF3>EXIT <PF4>RETURN <PF6>COMMENTS <PF10>PRINT <CLEAR>EXIT

DIN 10A1145 BROWNLEE, BENJAMIN DATE COMPUTATION/ENTRY KRCLM40
 LAST COMP. 92UPDATE OF PE, PH, TAC INFO DONE 03/15/2010 BY C240KDH
 DATE RECEIVED 2006 04 24 TIME TO SERVE (MINIMUM) 002 03 16
 MINIMUM TERM 003 00 00 TIME TO SERVE (MAXIMUM) 008 03 16
 MAXIMUM TERM 009 00 00 TIME OWED (MINIMUM)
 JAIL TIME (DAYS) 0254 TIME OWED (MAXIMUM)
 DATE SENTENCED PAROLE JAIL TIME (DAYS)
 ORIG. MAX. EXP. DATE NET TIME OWED
 DATE DECLARED DELINQUENT LIMITED CREDIT TIME POSSIBLE 00 06 00
 DATE RETURNED SUPPLEMENTAL MERIT TIME POSS.
 ORIG. DATE RECEIVED MERIT TIME POSSIBLE
 DATE RELEASED GOOD TIME ADJUSTMENT
 DATE FAILED TO RETURN GOOD TIME POSSIBLE 003 00 00
 DATE ESCAPED LIMITED CREDIT TIME DATE 2011 02 09
 ORIG. PAR. ELIG. DATE SUPPLEMENTAL MERIT ELIG DT
 OTHER STATE SENT. DATE MERIT ELIGIBILITY DATE
 DATE DISCHARGED PAROLE ELIGIBILITY DATE 2008 08 09
 DATE REAFFIRMED PAROLE HEARING DATE/TYPE 2010 05 REAP
 PRIOR TIME CREDIT TENTATIVE RELEASE DATE
 MEPS MAXIMUM EXPIRATION DATE 2014 08 09
 PAROLE BOARD DISCHARGE CONDITIONAL RELEASE DATE 2011 08 09
 PRS PRS ME T.A.C. DATE/TYPE 2011 04 INIT
 REMARKS 550 DAYS LGT @OCFS
 <PF3>EXIT <PF4>RETURN <PF6>COMMENTS <PF10>PRINT <CLEAR>EXIT

DIN 10A1145 BROWNLEE, BENJAMIN DATE COMPUTATION/ENTRY KRCLM40
 LAST COMP. 92UPDATE OF PE, PH, TAC INFO DONE 05/17/2010 BY C240EMD
 DATE RECEIVED 2006 04 24 TIME TO SERVE (MINIMUM) 002 03 16
 MINIMUM TERM 003 00 00 TIME TO SERVE (MAXIMUM) 008 03 16
 MAXIMUM TERM 009 00 00 TIME OWED (MINIMUM)
 JAIL TIME (DAYS) 0254 TIME OWED (MAXIMUM)
 DATE SENTENCED PAROLE JAIL TIME (DAYS)
 ORIG. MAX. EXP. DATE NET TIME OWED
 DATE DECLARED DELINQUENT LIMITED CREDIT TIME POSSIBLE 00 06 00
 DATE RETURNED SUPPLEMENTAL MERIT TIME POSS.
 ORIG. DATE RECEIVED MERIT TIME POSSIBLE
 DATE RELEASED GOOD TIME ADJUSTMENT
 DATE FAILED TO RETURN GOOD TIME POSSIBLE 003 00 00
 DATE ESCAPED LIMITED CREDIT TIME DATE 2011 02 09
 ORIG. PAR. ELIG. DATE SUPPLEMENTAL MERIT ELIG DT
 OTHER STATE SENT. DATE MERIT ELIGIBILITY DATE
 DATE DISCHARGED PAROLE ELIGIBILITY DATE 2008 08 09
 DATE REAFFIRMED PAROLE HEARING DATE/TYPE 2012 05 REAP
 PRIOR TIME CREDIT TENTATIVE RELEASE DATE
 MEPS MAXIMUM EXPIRATION DATE 2014 08 09
 PAROLE BOARD DISCHARGE CONDITIONAL RELEASE DATE 2011 08 09
 PRS PRS ME T.A.C. DATE/TYPE 2011 04 INIT
 REMARKS 550 DAYS LGT @OCFS
 <PF3>EXIT <PF4>RETURN <PF6>COMMENTS <PF10>PRINT <CLEAR>EXIT

DIN 10A1145 BROWNLEE, BENJAMIN DATE COMPUTATION/ENTRY KRCLM40
 LAST COMP. 92UPDATE OF PE, PH, TAC INFO DONE 02/14/2011 BY C010SLQ
 DATE RECEIVED 2006 04 24 TIME TO SERVE (MINIMUM) 002 03 16
 MINIMUM TERM 003 00 00 TIME TO SERVE (MAXIMUM) 008 03 16
 MAXIMUM TERM 009 00 00 TIME OWED (MINIMUM)
 JAIL TIME (DAYS) 0254 TIME OWED (MAXIMUM)
 DATE SENTENCED PAROLE JAIL TIME (DAYS)
 ORIG. MAX. EXP. DATE NET TIME OWED
 DATE DECLARED DELINQUENT LIMITED CREDIT TIME POSSIBLE 00 06 00
 DATE RETURNED SUPPLEMENTAL MERIT TIME POSS.
 ORIG. DATE RECEIVED MERIT TIME POSSIBLE
 DATE RELEASED GOOD TIME ADJUSTMENT
 DATE FAILED TO RETURN GOOD TIME POSSIBLE 003 00 00
 DATE ESCAPED LIMITED CREDIT TIME DATE 2011 02 09
 ORIG. PAR. ELIG. DATE SUPPLEMENTAL MERIT ELIG DT
 OTHER STATE SENT. DATE MERIT ELIGIBILITY DATE
 DATE DISCHARGED PAROLE ELIGIBILITY DATE 2008 08 09
 DATE REAFFIRMED PAROLE HEARING DATE/TYPE 2012 05 REAP
 PRIOR TIME CREDIT TENTATIVE RELEASE DATE
 MEPS MAXIMUM EXPIRATION DATE 2014 08 09
 PAROLE BOARD DISCHARGE CONDITIONAL RELEASE DATE 2011 08 09
 PRS PRS ME T.A.C. DATE/TYPE 2011 03 INIT
 REMARKS 550 DAYS LGT @OCFS
 <PF3>EXIT <PF4>RETURN <PF6>COMMENTS <PF10>PRINT <CLEAR>EXIT

DIN 10A1145 BROWNLEE, BENJAMIN DATE COMPUTATION/ENTRY KRCLM40
 LAST COMP. 92UPDATE OF PE, PH, TAC INFO DONE 02/14/2011 BY C010SLQ
 DATE RECEIVED 2006 04 24 TIME TO SERVE (MINIMUM) 002 03 16
 MINIMUM TERM 003 00 00 TIME TO SERVE (MAXIMUM) 008 03 16
 MAXIMUM TERM 009 00 00 TIME OWED (MINIMUM)
 JAIL TIME (DAYS) 0254 TIME OWED (MAXIMUM)
 DATE SENTENCED PAROLE JAIL TIME (DAYS)
 ORIG. MAX. EXP. DATE NET TIME OWED
 DATE DECLARED DELINQUENT LIMITED CREDIT TIME POSSIBLE 00 06 00
 DATE RETURNED SUPPLEMENTAL MERIT TIME POSS.
 ORIG. DATE RECEIVED MERIT TIME POSSIBLE
 DATE RELEASED GOOD TIME ADJUSTMENT
 DATE FAILED TO RETURN GOOD TIME POSSIBLE 003 00 00
 DATE ESCAPED LIMITED CREDIT TIME DATE 2011 02 09
 ORIG. PAR. ELIG. DATE SUPPLEMENTAL MERIT ELIG DT
 OTHER STATE SENT. DATE MERIT ELIGIBILITY DATE
 DATE DISCHARGED PAROLE ELIGIBILITY DATE 2008 08 09
 DATE REAFFIRMED PAROLE HEARING DATE/TYPE 2012 05 REAP
 PRIOR TIME CREDIT TENTATIVE RELEASE DATE
 MEPS MAXIMUM EXPIRATION DATE 2014 08 09
 PAROLE BOARD DISCHARGE CONDITIONAL RELEASE DATE 2011 08 09
 PRS PRS ME T.A.C. DATE/TYPE 2011 03 INIT
 REMARKS 550 DAYS LGT @OCFS
 <PF3>EXIT <PF4>RETURN <PF6>COMMENTS <PF10>PRINT <CLEAR>EXIT

DIN 10A1145 BROWNLEE, BENJAMIN DATE COMPUTATION/ENTRY KRCLM40
 LAST COMP. 91LOST GOOD TIME ADJUSTMENT DONE 05/09/2011 BY C010SLQ
 DATE RECEIVED 2010 03 12 TIME TO SERVE (MINIMUM) 002 03 16
 MINIMUM TERM 003 00 00 TIME TO SERVE (MAXIMUM) 008 03 16
 MAXIMUM TERM 009 00 00 TIME OWED (MINIMUM)
 JAIL TIME (DAYS) 0254 TIME OWED (MAXIMUM)
 DATE SENTENCED PAROLE JAIL TIME (DAYS)
 ORIG. MAX. EXP. DATE NET TIME OWED
 DATE DECLARED DELINQUENT LIMITED CREDIT TIME POSSIBLE
 DATE RETURNED SUPPLEMENTAL MERIT TIME POSS.
 ORIG. DATE RECEIVED MERIT TIME POSSIBLE
 DATE RELEASED GOOD TIME ADJUSTMENT 03 00 00
 DATE FAILED TO RETURN GOOD TIME POSSIBLE 000 00 00
 DATE ESCAPED LIMITED CREDIT TIME DATE
 ORIG. PAR. ELIG. DATE SUPPLEMENTAL MERIT ELIG DT
 OTHER STATE SENT. DATE MERIT ELIGIBILITY DATE
 DATE DISCHARGED PAROLE ELIGIBILITY DATE 2008 08 09
 DATE REAFFIRMED PAROLE HEARING DATE/TYPE 2012 05 REAP
 PRIOR TIME CREDIT TENTATIVE RELEASE DATE
 MEPS MAXIMUM EXPIRATION DATE 2014 08 09
 PAROLE BOARD DISCHARGE CONDITIONAL RELEASE DATE 2014 08 09
 PRS PRS ME T.A.C. DATE/TYPE FMAX
 REMARKS 550 DAYS LGT @OCFS, 3/11 TAC
 <PF3>EXIT <PF4>RETURN <PF6>COMMENTS <PF10>PRINT <CLEAR>EXIT

DIN 10A1145 BROWNLEE, BENJAMIN DATE COMPUTATION/ENTRY KRCLM40
 LAST COMP. 92UPDATE OF PE, PH, TAC INFO DONE 05/25/2012 BY C000KLL
 DATE RECEIVED 2010 03 12 TIME TO SERVE (MINIMUM) 002 03 16
 MINIMUM TERM 003 00 00 TIME TO SERVE (MAXIMUM) 008 03 16
 MAXIMUM TERM 009 00 00 TIME OWED (MINIMUM)
 JAIL TIME (DAYS) 0254 TIME OWED (MAXIMUM)
 DATE SENTENCED PAROLE JAIL TIME (DAYS)
 ORIG. MAX. EXP. DATE NET TIME OWED
 DATE DECLARED DELINQUENT LIMITED CREDIT TIME POSSIBLE
 DATE RETURNED SUPPLEMENTAL MERIT TIME POSS.
 ORIG. DATE RECEIVED MERIT TIME POSSIBLE
 DATE RELEASED GOOD TIME ADJUSTMENT 03 00 00
 DATE FAILED TO RETURN GOOD TIME POSSIBLE 000 00 00
 DATE ESCAPED LIMITED CREDIT TIME DATE
 ORIG. PAR. ELIG. DATE SUPPLEMENTAL MERIT ELIG DT
 OTHER STATE SENT. DATE MERIT ELIGIBILITY DATE
 DATE DISCHARGED PAROLE ELIGIBILITY DATE 2008 08 09
 DATE REAFFIRMED PAROLE HEARING DATE/TYPE 2014 05 REAP
 PRIOR TIME CREDIT TENTATIVE RELEASE DATE
 MEPS MAXIMUM EXPIRATION DATE 2014 08 09
 PAROLE BOARD DISCHARGE CONDITIONAL RELEASE DATE 2014 08 09
 PRS PRS ME T.A.C. DATE/TYPE FMAX
 REMARKS 550 DAYS LGT @OCFS, 3/11 TAC
 <PF3>EXIT <PF4>RETURN <PF6>COMMENTS <PF10>PRINT <CLEAR>EXIT

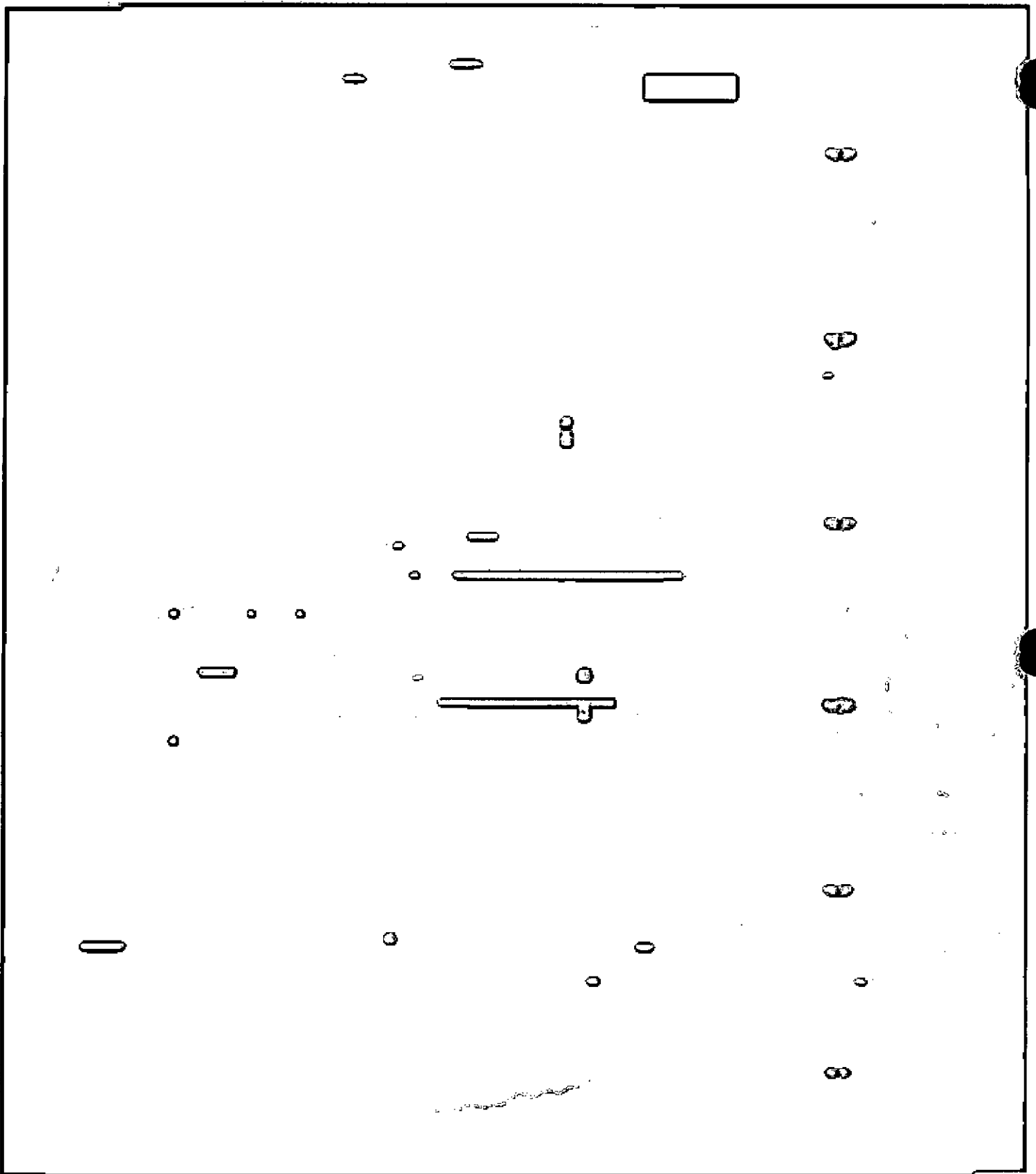
09/23/21 CCNSMXS RECEPTION/CLASSIFICATION SYSTEM KRCLM00
 16:05:52 C999W410 U01 UPDATE PE, TRD, GRAD DATES AND PH DATE/TYPE
 DIN: 10A1145 NAME: BROWNLEE, BENJAMIN NYSID: 09059294J
 DATE RECEIVED: 03/12/2010 BY: 05/22/2014 C370NSC

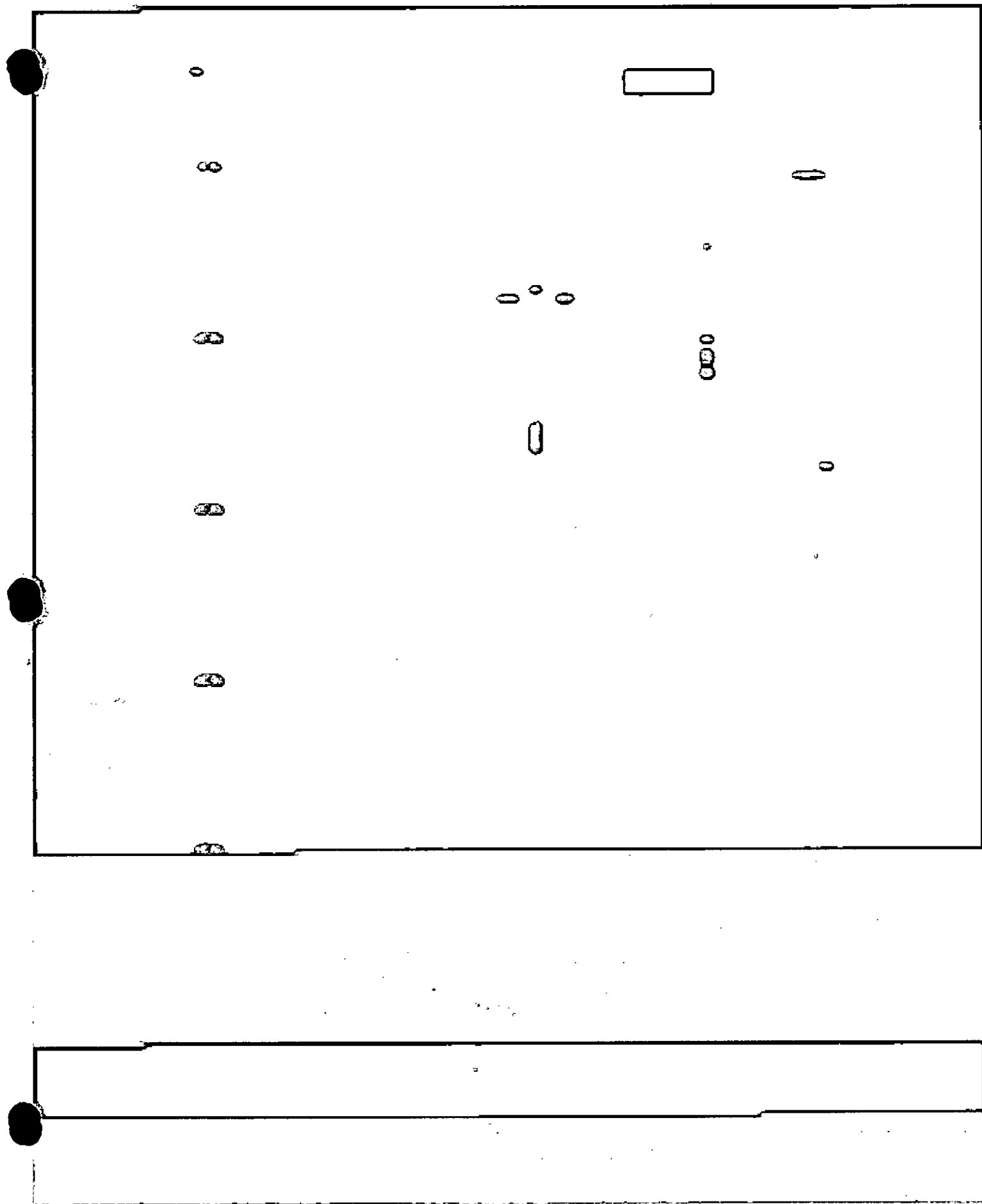
HEARING DATE TIME ALLOWANCE COMM DATE
 HEARING TYPE FMAX TIME ALLOWANCE COMM TYPE FMAX
 TENTATIVE RELEASE DATE POST-RELEASE SUPERVISION
 GRADUATION DATE PRS MAXIMUM EXPIRATION DT
 PAROLE ELIGIBILITY DATE 2008 08 09 MAXIMUM EXPIRATION DATE 2014 08 09
 MERIT ELIGIBILITY DATE ORIGINAL GOOD TIME
 SUPP MERIT ELIG DATE GOOD TIME RESTORED +
 PAROLE DISCHARGE DATE GOOD TIME LOST -
 MAX EXP PAR SUPER (MEPS) GOOD TIME POSSIBLE = 0000 00 00
 LIMITED CREDIT TIME POSS
 LIMITED CREDIT TIME DATE CONDITIONAL RELEASE DATE 2014 08 09
 <ENTER> (CONTINUE) <PF3> EXIT <PF4> RETURN <CLEAR> EXIT(SYS)
 <PF6> COMMENT <PF10> PRINT

16:06:08 Thursday, September 23, 2021

```
09/23/21 CCNSMXS      RECEPTION/CLASSIFICATION SYSTEM      KRCLMCM
16:05:57 C999W410      DATE COMP COMMENTS
DIN: 10A1145  NAME: BROWNLEE, BENJAMIN      NYSID: 09059294J
DATE RECEIVED: 03/12/2010      LAST COMP: U01      BY: C370NSC
NUMBER OF COMMENTS: 10
ADDITIONAL COMMENTS:
( _____ )
( _____ )
COMMENT: 10  BY: C000KLL 05/25/12 01:33P      LATEST COMP TYPE: 92
( 550 DAYS LGT @OCFS, 3/11 TAC )
( _____ )
COMMENT: 9  BY: C000KLL 05/25/12 01:33P      LATEST COMP TYPE: 92
( GOOD TIME ADJUSTMENT: 030000 )
( _____ )
COMMENT: 8  BY: RCLCNVH 05/09/11 00:00A      LATEST COMP TYPE: 91
( 550 DAYS LGT @OCFS, 3/11 TAC )
( _____ )
COMMENT: 7  BY: RCLCNVH 02/14/11 00:00A      LATEST COMP TYPE: 92
( 550 DAYS LGT @OCFS )
( _____ )
*** TOP OF COMMENTS DISPLAY ***

<PF3> EXIT      <PF7> BACKWARD      <PF8> FORWARD      <PF9> PRINT ALL      <CLEAR> EXIT
```





Department of Corrections and Community Supervision

Visitors

Inmate Lookup

Inmate Lookup

Inmate Information

Inmate Information Data Definitions are provided for most of the elements listed below. When a detailed definition is available for a specific element, you may click on the element's label to view it. . .

Identifying and Location Information As of 09/17/21	
<u>DIN (Department Identification Number)</u>	10A1145
Inmate Name	BROWNLEE, BENJAMIN
Sex	MALE
Date of Birth	<input type="text"/>
<u>Race / Ethnicity</u>	BLACK
<u>Custody Status</u>	DISCHARGED
<u>Housing / Releasing Facility</u>	FIVE POINTS
<u>Date Received (Original)</u>	03/12/2010
<u>Date Received (Current)</u>	03/12/2010
<u>Admission Type</u>	
<u>County of Commitment</u>	NEW YORK
<u>Latest Release Date / Type (Released Inmates Only)</u>	08/08/14 DISCH - MAXIMUM EXPIRATION

STATE OF NEW YORK COUNTY OF MONROE
COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK

-against-

BENJAMIN BROWNLEE

Sealed Indictment #

CR# 13-380033-NYS

CPL § 710.30 Notice

CPL § 250.20 Demand

PLEASE TAKE NOTICE that the People intend to offer at the trial of the above case:

— Evidence of oral statement(s) made by the defendant, to a public servant, _____, at
_____ on _____ (at or about _____ a.m./p.m.), the sum and substance of which is:

— Evidence of a written statement made by the defendant to public servant(s) _____ at
_____ on _____ (at or about _____ a.m./p.m.), a copy of which is attached to this notice.

Testimony regarding an observation of the defendant at the time or place of commission of the offense and/or upon some other occasion relevant to the case, such testimony to be given by a witness who has previously identified the defendant at the following identification procedure(s) [The "Name of Witness" refers to name of witness making a positive identification]:

Date:	Type:	Place:	Approx. Time:	Name of Witness:
-------	-------	--------	---------------	------------------

PLEASE TAKE FURTHER NOTICE that if the defendant intends to offer for any purpose whatever testimony that at the time of the commission of the crime charged the defendant was at some place or places other than the scene of the crime and intends to call witnesses in support of such defense, the People request that within eight days of the service of this demand the defendant serve upon the People and file a copy thereof with the court, a "NOTICE OF ALIBI" in accordance with Criminal Procedure Law Section 250.20(1).

X THE PEOPLE ARE READY FOR TRIAL. People v. Kendzia, 64 NY2d 331 (1985).

Dated: Rochester, New York
May 21, 2014

Respectfully submitted,
SANDRA DOORLEY
Monroe County District Attorney
832 Ebenezer Watts Building
Rochester, New York 14614

SEALED

No. 0476

Monroe County Court

New York

RECEIVED

2014 MAY 21 PM 2:49

MONROE SUPREME/COUNTY CT
STATE OF NEW YORK

THE PEOPLE

of the
State of New York
vs.

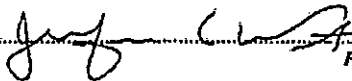
BENJAMIN BROWNLEE

INDICTMENT

Assault in the Second Degree and Strangulation in the Second Degree

SANDRA DOORLEY
District Attorney

A TRUE BILL


Foreman

May 21, 2014

Filed
Date

Crimes of Conviction
 If all 4 crime fields
 contain data, there
 may be additional
 crimes not shown
 here. In this case, the
 crimes shown here
 are those with the
 longest sentences.
 As of 09/17/21

Crime	Class
JO - ASSAULT 1ST	B

Sentence Terms and Release Dates

Under certain circumstances, an inmate may be released prior to
 serving his or her minimum term and before the earliest release
 date shown for the inmate.

As of 09/17/21

<u>Aggregate Minimum Sentence</u>	0003 Years, 00 Months, 00 Days
<u>Aggregate Maximum Sentence</u>	0009 Years, 00 Months, 00 Days
<u>Earliest Release Date</u>	
<u>Earliest Release Type</u>	
<u>Parole Hearing Date</u>	
<u>Parole Hearing Type</u>	FULL MAXIMUM
<u>Parole Eligibility Date</u>	08/09/2008
<u>Conditional Release Date</u>	08/09/2014
<u>Maximum Expiration Date</u>	08/09/2014
<u>Maximum Expiration Date for Parole Supervision</u>	
<u>Post Release Supervision Maximum Expiration Date</u>	
<u>Parole Board Discharge Date</u>	

STATE OF NEW YORK
COUNTY COURT

COUNTY OF MONROE

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

BENJAMIN BROWNLEE

14/5827

FIRST COUNT:

THE GRAND JURY OF THE COUNTY OF MONROE, by this indictment, accuses the defendant, BENJAMIN BROWNLEE, of the crime of Assault in the Second Degree, in violation of Section 120.05, Subdivision 3 of the Penal Law of the State of New York, committed as follows:

The defendant, on or about November 12, 2013, in the County of Monroe, State of New York, with intent to prevent a police officer from performing a lawful duty, caused physical injury to New York State Corrections Officer John Buczek.

SECOND COUNT:

AND THE GRAND JURY OF THE COUNTY OF MONROE, by this indictment, further accuses the defendant, BENJAMIN BROWNLEE, of the crime of Strangulation in the Second Degree, in violation of Section 121.12 of the Penal Law of the State of New York, committed as follows:

The defendant, on or about November 12, 2013, in the County of Monroe, State of New York, with intent to impede the normal breathing or circulation of the blood of another person, applied pressure on the throat or neck of Brandon Short causing stupor, loss of consciousness for any period of time, or any other physical injury or impairment.

Sandra Doorley
SANDRA DOORLEY
DISTRICT ATTORNEY OF MONROE COUNTY

2014 MAY 28 PM 1:55
Monroe County Clerk
FILED

STATE OF NEW YORK : COUNTY COURT
COUNTY OF MONROE : CRIMINAL TERM

-----X
THE PEOPLE OF THE STATE OF NEW YORK : Indictment No.
: 2014-0476
:
-VS- :
:
:
BENJAMIN BROWNLEE, :
Defendant. :
: Arraignment
-----X

Hall of Justice
99 Exchange Boulevard
Rochester, New York 14614
June 18, 2014

FILED
2017 AUG -13 PM 1:16
MONROE COUNTY CLERK

P r e s i d i n g :

HONORABLE CHRISTOPHER S. CIACCIO

County Court Judge

A p p e a r a n c e s :

SANDRA DOORLEY, ESQ.
District Attorney, Monroe County
BY: JENNIFER HYATT, ESQ.
Assistant District Attorney

TIMOTHY DONAHER, ESQ.
Public Defender, Monroe County
BY: JOSHUA STUBBE, ESQ.
Assistant Public Defender

Defendant present

Box 1521

Reported By:
DUPLICATE FILE COPY

REGINA A. ZIELKE, CSR, RPR
Official Court Reporter

1 MS. HYATT: Your Honor, at this time, I make
2 a motion to unseal indictment number 0476 filed May
3 21, 2014.

4 THE COURT: Motion is granted.

5 MS. HYATT: Thank you, Your Honor.

6 Sir, are you Benjamin Brownlee?

7 THE DEFENDANT: Yes.

8 MS. HYATT: Okay. Have you had an
9 opportunity to speak with the attorney that's standing
10 in for you today, Mr. Stubbe?

11 THE DEFENDANT: Yes.

12 MS. HYATT: Jennifer Hyatt for the People,
13 Your Honor. May I proceed with arraignment?

14 THE COURT: You may.

15 Mr. Stubbe, you want to be appointed?

16 MR. STUBBE: I've interviewed Mr. Brownlee.
17 He is an inmate in the State Department of
18 Corrections. He does qualify for our representation.
19 I ask our office be appointed at this time.

20 THE COURT: I'll make that appointment at
21 this time.

22 You may proceed.

23 MS. HYATT: Mr. Brownlee, according to
24 indictment 0476 filed May 21st, 2014, you're charged
25 with one count of assault in the second degree and one

1 count of strangulation in the second degree, both
2 alleged to have occurred November 12th, 2013. Do
3 you waive a further reading and enter a plea at this
4 time?

5 MR. STUBBE: Judge, at this point in time,
6 we would waive a full reading, ask a not guilty plea
7 be entered. I have received a copy of the indictment
8 as well as attached 710.30 notice. The 710.30 notice
9 doesn't indicate People's intention to use either
10 statements or identification procedure, but does ask
11 for alibi and statement of readiness.

12 THE COURT: So noted. The entry of the plea
13 of not guilty is also noted as well. Mr. Brownlee is
14 obviously being held by State corrections.

15 MR. STUBBE: He is, Judge. It is my
16 understanding he's going to be held until
17 approximately August 8th of 2014.

18 THE COURT: I'll continue -- I will hold him
19 with no bail in this court, but I'll reserve your
20 right to make a bail application upon his release from
21 the State correctional facility.

22 MR. STUBBE: Thank you.

23 THE COURT: And I'll adjourn it once for --
24 I'll put it over for status on July 16th at 9:30.
25 You can make a bail application before then in

1 chambers or at that time as well, Mr. Stubbe. Then
2 I'll set a motion argument date on July 16th as
3 well.

4 MS. HYATT: Your Honor, I will prepare a
5 body order for Mr. Brownlee with regard to the
6 July 16th date. And also when I find out who from
7 the Public Defender's Office will be representing him,
8 if we choose to set up a conference with Your Honor,
9 may we just contact chambers?

10 THE COURT: You may.

11 MS. HYATT: Thank you. The People are ready
12 for trial.

13 MR. STUBBE: Thank you, Judge.

14 THE COURT: Mr. Brownlee, you understand
15 what's happening here?

16 MR. STUBBE: He has questions, Judge. This
17 was done as a sealed indictment, and without going
18 further into that, he has questions as to how he
19 simply appeared and how he's indicted without any
20 statements being provided to him. Presumably what
21 he's requesting is felony complaints. I explained to
22 him they simply presented the matter to the grand jury
23 as opposed to filing it in local court. He's
24 questioning that process more than anything. I
25 indicated I or whoever from my office is assigned will

1 fully explain that to him later.

2 THE COURT: It is not unusual, Mr. Brownlee,
3 it happens this way. Obviously stay in touch with
4 your attorney. Your attorney can explain the process.
5 We'll be back on July 16th for further proceedings
6 on this matter.

7 THE DEFENDANT: Your Honor, I don't know how
8 I'm going to stay in contact. I don't have no
9 information.

10 THE COURT: I understand the difficulty,
11 believe me.

12 MR. STUBBE: Your Honor, I've taken his DIN
13 number. We'll be able to be in contact with him
14 through letters and we will figure out a way to make
15 him more accessible to us if necessary. Thank you.

16 (Certified to be a true and accurate transcript.)

17 

18 REGINA A. ZIELKE, CSR, RPR
19 Official Court Reporter
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21
22
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STATE OF NEW YORK - COUNTY OF MONROE

SUPREME / COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK
-VS-

Defendant.

~~DO NOT WRITE~~

Long Anthony, Jr. JSE

☐ CASH BAIL

☒ SECURING ORDER / CUSTODY

☐ RELEASE ORDER *DEFENSE ATTORNEY TO COMPLETE IN FULL*

Indictment/SCI # 2014-0476 Filed 05-21-2014

☐ Pre-Indictment D.O.B. [REDACTED]

Complete this section or attach Disposition Memo

CR #'s	CHARGES
13-380033	<i>1st DEGREE BURGLARY</i>
	<i>2nd DEGREE BURGLARY</i>
	UNSEALED

An (Indictment)(SCI) (Pre-Indictment charges) having been filed with the (Supreme)(County)(City/Town of _____) Court charging the above-named Defendant with the offense(s) of 1st DEGREE BURGLARY

_____ and said Defendant having been arraigned therein, it is hereby ORDERED that said Defendant be and hereby is held by the Court for further proceedings hereunder and,

☐ That the application for admission to bail is hereby granted and that the amount of said bail is fixed at \$_____ cash, or \$_____ Bond. Now upon posting of such bail and full compliance thereof with the Securing Order, the Defendant is thereupon authorized to be at liberty and the Sheriff of the County of Monroe is thereupon directed to discharge the Defendant from custody.

☒ That said Defendant be and hereby is held by this Court for further proceedings hereunder and that said Defendant is committed to the Sheriff of the County of Monroe, to appear before this Court at such time as may be required unless sooner released on bail, recognizance, or other such Order of this Court. *NB/NE*

☐ That said Defendant having been released on this date by Hon. _____ and said defendant now being in custody of the Sheriff of Monroe County, It is ordered that the Sheriff release from his custody the said defendant.
☐ ROR ☐ Pre-Trial Release ☐ Acquittal ☐ Dismissal ☐ Time Served ☐ Other _____
☐ Bail in the amount of \$_____, previously posted in the _____ Court is reinstated and continued.
Attorney's Name _____ Phone # _____

Dated at Rochester, NY

6/13/14

Hon. *CS*

Supreme Court Justice / County Court Judge *CIACCIO*

☒ Next Court Date 7/16/14 @ 9:30 am/pm Reason BAIL APD

☐ Sentence (optional) _____

☐ Youthful Offender _____

Cash Bail Posted on _____ (date) with the Monroe County Sheriff's Department _____

by: _____ (name) _____ (address)

CPL Sections 210.15(6) & 320.10 (Rev 10/2011)

1 STATE OF NEW YORK

2 COUNTY OF MONROE COUNTY COURT

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK : INDICTMENT NO.

5 : 2014-0476

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- against -

BENJAMIN BROWNLEE, : BAIL APP/ADJ

Defendant :

-----X

Hall of Justice

Rochester, New York

July 16, 2014

B E F O R E:

HONORABLE CHRISTOPHER S. CIACCIO

County Court Judge

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

SANDRA DOORLEY, ESQ.

District Attorney, Monroe County

BY: JENNIFER HYATT, ESQ.

Assistant District Attorney

On behalf of the People of the

State of New York

TIMOTHY DONAHER, ESQ.

Public Defender, Monroe County

BY: MICHAEL DORAN, ESQ.

Assistant Public Defender

On behalf of the Defendant

The Defendant Appeared in Person

R E P O R T E D B Y:

CAROLANN M. SCORZA, CSR

Senior Court Reporter

161 Hall of Justice

Rochester, New York 14614

(585) 371-3822

1 THE COURT: Is this Mr. Brownlee?

2 COURT DEPUTY: Yes, this is him.

3 THE COURT: Good morning, Mr. Brownlee.

4 THE DEFT: Good morning.

5 THE COURT: You appear with your attorney,
6 Mr. Doran?

7 THE DEFT: Huh?

8 THE COURT: Do you appear with your attorney,
9 Mr. Doran?

10 MR. DORAN: We have never met.

11 THE DEFT: Never met. That's why I don't
12 know who my attorney is.

13 THE COURT: All right. Who's handling this,
14 Mr. Doran? Is it Mr. Vitale?

15 MR. DORAN: It's actually Andre Vitale from
16 my office, and Mr. Vitale's at trial, currently engaged
17 before Judge Moran. He should be available on any next
18 court date.

19 THE COURT: Mr. Brownlee -- has he met Mr.
20 Vitale?

21 MR. DORAN: No, he has not.

22 THE COURT: So Mr. Doran and Vitale are from
23 the Monroe County Public Defender's Office.

24 THE DEFT: Yes.

25 THE COURT: And I have assigned the Monroe

1 County Public Defender's Office to represent you in
2 this matter; do you understand that?

3 THE DEFT: Yes.

4 THE COURT: What would you like to do this
5 morning since he is here?

6 MR. DORAN: Yes. I can put it off to August
7 6th for status and/or disposition.

8 MS. HYATT: Your Honor, I have provided
9 discovery to Mr. Vitale in this matter. My guess --
10 and while I can not speak for his counsel -- my guess
11 is, that we'll probably be on a motion schedule as
12 opposed to a disposition schedule.

13 THE COURT: I'll do that. I'm going to
14 adjourn this matter to September 17th for motion
15 argument, and ask Mr. Doran to ask Mr. Vitale to submit
16 his motions 2 weeks in advance of that date.

17 So, Mr. Brownlee, what I'm doing is, I'm
18 adjourning this matter to September 17th at 9:30 for
19 what's called motion argument. Your attorney will talk
20 to you about filing motions. We'll have an argument on
21 that date; do you understand?

22 THE DEFT: Yes.

23 MS. HYATT: Your Honor, before we conclude --
24 when Mr. Brownlee was in court with Your Honor for
25 arraignment, we did not address an issue of bail or a

1 detrainer. And it's my understanding that there
2 currently is not a detrainer in place in Monroe County
3 with regard to these charges and I'd like to have an
4 opportunity to be heard on bail.

5 THE COURT: You may proceed.

6 (There was an off-the-record discussion.)

7 MR. DORAN: Your Honor, can I have a few
8 minutes then to talk to Mr. Vitale because that was not
9 what was at all discussed with me in terms of trying to
10 be prepared for today.

11 THE COURT: That's fine. So I'm going to
12 recall it in just a couple minutes.

13 MS. HYATT: And I'll share what information I
14 have with counsel.

15 (Recess in the proceeding.)

16 * * *

17 THE COURT: I note the appearance of Mr.
18 Brownlee with counsel, Mr. Doran, and Miss Hyatt on
19 behalf of the People.

20 We briefly adjourned this matter for a bail
21 application. Mr. Doran, do you want to be heard on the
22 bail application?

23 MR. DORAN: Yes, Judge. He's released as he
24 stands before you so I'm not sure what the reason for
25 any change in bail would be. And I'd ask the Court,

1 first, to leave him ROR on this charge. Upon my
2 information and belief, he's age 24. He has one prior
3 for which he is about to expire. He has served the
4 maximum expiration of that sentence, and he's due out
5 on that charge August 9th, according to the website.
6 It would be my belief they probably will release him on
7 August 8th. According to my conversation with him, he
8 is due to be released to a shelter upon his release.
9 That he'll be connected to services. He's already
10 started the pre-release process. He expects to be
11 connected to housing and human services and benefits in
12 that regard. I believe that's going to be in the
13 Binghamton area. That he has no history of any bench
14 warrants or any failures to appear. He has the one
15 prior, noted just a moment ago. He does have an open
16 case in Oneida County for which he is also, upon my
17 information and belief, being in conversation with him,
18 being released on his own recognizance. It would
19 appear that case is still pending in a local town
20 court. He has counsel on that charge. I will make an
21 effort to try and get ahold of that attorney as well.
22 This is a case where the People chose to employ a
23 sealed indictment and therefore he had no opportunity
24 to appear in local court on the charges -- is my only
25 point in raising that. He was, I believe, arrested at

1 Five Points a couple months ago and he's been, to this
2 time, relying upon DOCCS to transport him from one
3 location to another. So if he missed any prior court
4 dates, that was only because no one brought him on an
5 order to bring him here.

6 My conversation also included with Miss Hyatt, in
7 any event, a belief that perhaps he was being
8 considered for some form of civil commitment. I'm
9 really not aware of any such process. I know the
10 notice provision would require that they commence that
11 process 4 months ago or so, 3 and a half months ago.
12 It's a fairly lengthy process. And the fact that
13 that's not reflected in his rap sheet or any other
14 counsel that might be representing him, I believe
15 means, he's already been declined for that. That he
16 will -- the DOCCS will release him on or about August
17 9th. From my conversation with him, he wishes to
18 return to court. He wishes to contest these charges.
19 He believes that he'll be under the terms and
20 conditions of parole and connected to social services
21 and transportation which will be made available to him
22 to make sure that he is able to travel from Binghamton
23 back to Monroe County, if and when the Court directs.
24 And based upon all that, I'd ask the Court to continue
25 his release ROR on this charge.

1 THE COURT: Miss Hyatt?

2 MS. HYATT: Your Honor, when Mr. Brownlee
3 appeared before the Court approximately a month ago for
4 arraignment, the issue of bail was never addressed.
5 The Court didn't formally determine that he was
6 released on his own recognizance nor did the Court
7 formally set bail, so we had not had a bail hearing as
8 of yet. My understanding is, that in my conversations
9 with the Oneida County Prosecutor, that there had been
10 at least one incident where Mr. Brownlee did refuse
11 transport to go to court when there was a body order in
12 place. That does raise some concerns for me. I don't
13 know if that is true. That is just the information
14 that I have been given. It's my understanding that
15 there are indictments pending, both in Oneida County
16 and Seneca County, for the E felony of aggravated
17 harassment of an employee by an inmate. They both have
18 court dates scheduled for August in Seneca County for
19 motion argument and in Oneida for a Huntley hearing.
20 There was, as Mr. Doran stated, only one prior
21 conviction. That being a juvenile offender where he
22 was sentenced to 3 to 9 years with the Department of
23 Corrections. And those 9 years are expiring on August
24 9th, with an anticipated release date of August 8th.
25 The information regarding that comes to me from the

1 Judge's secretary in Oneida County, along with a brief
2 conversation with a woman from the Department of
3 Corrections. With regard to the civil commitment
4 issue, my understanding is that there had been an
5 evaluation done and they are awaiting a determination
6 as to whether or not that would be appropriate, but
7 that they anticipate any day now, we will know whether
8 that will be put into place or whether he will be
9 released from the Department of Corrections. I have
10 been asked to be notified as soon as the Department of
11 Corrections does know that, and I will, of course, let
12 Counsel know. I did share much of this information in
13 an e-mail I sent to Mr. Vitale yesterday, that I also
14 shared with Mr. Doran. And I shared with Mr. Doran the
15 rest of the information that I had prior to our bail
16 application today.

17 On that basis, Your Honor, regardless of -- I
18 don't know his status in Oneida County with regard to a
19 hold. I do know there is bail and a retainer out of
20 Seneca County such that he may be transferred to their
21 jail after released from Department of Corrections, if
22 he's not continued to be held. The People would ask
23 that in this case, where there is now an indictment for
24 assault in the second degree and strangulation in the
25 second degree, both D violent felonies -- it's alleged

1 that Mr. Brownlee choked another inmate to the point of
2 unconsciousness, and that one of the corrections
3 officers suffered physical injury in trying to break
4 that up, to relieve the pressure on the other inmate's
5 neck. On that basis, Your Honor, the People would ask
6 for bail in the amount of \$10,000 cash, \$20,000 dollars
7 secured bond.

8 THE COURT: I think I did hold him no bail.
9 I don't think he was ROR'd, Lisa?

10 COURT CLERK: He was held no bail on June
11 18th, Your Honor.

12 THE COURT: No bail. So it wasn't an ROR.

13 MR. DORAN: I didn't know.

14 THE COURT: And what's pending in Seneca
15 County?

16 MS. HYATT: It's aggravated harassment of an
17 employee by an inmate. It's an E non-violent felony,
18 Penal Law Section 240.32. It's actually the same
19 charge in both Oneida and Seneca counties. And I
20 apologize, Your Honor. My information from Department
21 of Corrections was, that they were not showing a
22 detainer from Monroe County so I was not aware that you
23 held him no bail. I apologize.

24 THE COURT: Why is this in here?

25 MS. HYATT: Because he was being transported

1 from one facility to another by Department of
2 Corrections, and this incident occurred inside the
3 vehicle on Route 490, while inside Monroe County.

4 MR. DORAN: That's the allegation. They must
5 have been passing through some corner of Monroe County
6 at the time, but it would make an interesting issue.

7 THE COURT: And this conviction he's serving
8 time for now is what?

9 MR. DORAN: An A-1.

10 MS. HYATT: I believe it's an assault 1-A.

11 MR. DORAN: It's a YO, assault 1, attempt.

12 THE COURT: So he's residing in Binghamton in
13 a shelter, right?

14 MR. DORAN: That's the plan, upon his
15 release. I think it's important to distinguish it's a
16 mental health shelter, and that would be the first
17 release because he would need to get out and then take
18 him to social services. Yet, again, if it's activated
19 for him before they can get an actual proper apartment
20 for him. So at first, almost everyone's first stop, if
21 they have family -- he does not appear to have any
22 willing to take him in -- the first stop is a shelter.

23 MS. HYATT: But my understanding, he would
24 likely be transferred to Oneida or Seneca County Jail
25 based on detainers.

1 THE COURT: When?

2 MS. HYATT: When he is released from
3 Department of Corrections custody, the next retainer in
4 line will then come into place, which if there is a
5 detainer from Oneida County, he will go there. I did
6 not speak to that prosecutor yesterday. I did speak to
7 Seneca County yesterday and he informed me that there
8 was a detainer there.

9 MR. DORAN: My client says no. Upon my
10 client's information and belief, there is no detainer
11 for that charge. And I don't have the primary
12 information, and the People seem to be going on at
13 least several levels of hearsay.

14 THE COURT: What I'm going to do -- his
15 release date is August 8th?

16 MS. HYATT: That's correct.

17 THE COURT: All right. I'm going to hold him
18 on \$10,000 cash, \$20,000 bond. I'm going to adjourn
19 this to August 20th for further consideration of his
20 release status, so I'll reserve any rights, Mr. Doran.

21 MR. DORAN: Thank you, Judge.

22 THE COURT: Without regard to change of
23 circumstances, depending on what's happening in Oneida
24 and Seneca Counties with regard to his civil
25 confinement. So August 20th, and that's for release

1 status.

2 MS. HYATT: Just so the Court is aware, I
3 will be on trial at that time but I will make sure
4 whoever is handling calendar is well versed and has all
5 the information, and I'll share whatever I know with
6 Mr. Vitale.

7 THE COURT: And then, Mr. Doran, just to keep
8 the case moving, I'll give you a motion argument date.

9 MR. DORAN: All right..

10 COURT CLERK: You already did that, Judge --
11 September 17th.

12 THE COURT: I did. Oh, that's what we did
13 before, earlier today. On September 17th then for
14 motion argument.

15 MS. HYATT: And I'll delay asking the Court
16 to sign a body order for August 20th, until the week
17 prior, so that hopefully by that time we will know
18 what, if any, detainers have been applied.

19 THE COURT: That would be a good idea. Mr.
20 Doran, anything else?

21 MR. DORAN: I don't think so.

22 COURT CLERK: Did you say he's at Five
23 Points?

24 MR. DORAN: He's at Five Points, and you're
25 due to go back, right?

1 MS. HYATT: The People remain ready for
2 trial.

3 MR. DORAN: Thanks, everyone.

4 (Whereupon the matter was concluded.)

5 * * *

6
7 (Certified to be a true and accurate transcript.)

8 Carolann M. Scorza

9 Carolann M. Scorza

10 Certified Stenograph Reporter
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STATE OF NEW YORK - COUNTY OF MONROE

SUPREME COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK
-VS-

BROWNLEE, BENJAMIN

Defendant.

☒ CASH BAIL☒ SECURING ORDER / CUSTODY☐ RELEASE ORDER ☒ DEFENSE ATTORNEY TO COMPLETE IN FUG

2014-0476 05-21-2014

Indictment/SCI # _____ Filed _____

Pre-Indictment D.O.B. _____

Not in
Five Points
Correctional
Facility

Complete this section or attach Disposition Memo

CR #'s	CHARGES
13-380033	PL-120.05-03 -DF- 2-ASLT- 2:INT CAUS PH - 1 CT(S)
	PL-121.12 -DF- STRANGULATION 2ND - 1 CT(S)

An (Indictment) (SCI) (Pre-Indictment charges) having been filed with the (Supreme) (County) (City/Town of _____) Court charging the above-named Defendant with the offense(s) of MURDER

_____ and said Defendant having been arraigned therein, it is hereby
ORDERED that said Defendant be and hereby is held by the Court for further proceedings hereunder and,

☒ That the application for admission to bail is hereby granted and that the amount of said bail is fixed at \$ 10,000.00 cash or \$ 30,000.00 Bond. Now upon posting of such bail and full compliance thereof with the Securing Order, the Defendant is thereupon authorized to be at liberty and the Sheriff of the County of Monroe is thereupon directed to discharge the Defendant from custody.

☐ That said Defendant be and hereby is held by this Court for further proceedings hereunder and that said Defendant is committed to the Sheriff of the County of Monroe, to appear before this Court at such time as may be required unless sooner released on bail, recognizance, or other such Order of this Court.

☐ That said Defendant having been released on this date by Hon. _____, and said defendant now being in custody of the Sheriff of Monroe County, it is ordered that the Sheriff release from his custody the said defendant.

☐ ROR ☐ Pre-Trial Release ☐ Acquittal ☐ Dismissal ☐ Time Served ☐ Other _____
☐ Bail in the amount of \$ _____, previously posted in the _____ Court is reinstated and continued

Attorney's Name _____ Phone # _____

Dated at Rochester, NY

7/16/14

Hon. _____

Supreme Court Justice / County Court Judge

Carro

☒ Next Court Date 8/20/14 @ 9:30 am / pm Reason Drop

☐ Sentence (optional) _____

☐ Youthful Offender _____

Cash Bail Posted on _____ (date) with the Monroe County Sheriff's Department _____

by: _____ (name) _____ (address)

CPL Sections 210.13(6) & 520.10 (Rev 10/2011)

1 STATE OF NEW YORK : COUNTY OF MONROE
2 COUNTY COURT : CRIMINAL TERM
-----x
3 :
4 THE PEOPLE OF THE STATE OF NEW YORK :
: -versus- : Indictment No.
5 : 2014-0476
6 BENJAMIN BROWNLEE :
: ASSAULT 2ND
: STRANGULATION 2ND
7 Defendant. :
:
8 -----x ARGUE MOTIONS
9
10 Hall of Justice
11 Rochester, New York 14614
12 September 17, 2014
13
14 B e f o r e : THE HONORABLE CHRISTOPHER S. CIACCIO
15 County Court Judge
16
17 A p p e a r a n c e s :
18
19 SANDRA DOORLEY, ESQ.
20 District Attorney, County of Monroe
21 BY: JENNIFER HYATT, ESQ.
22 Assistant District Attorney
23
24 TIMOTHY P. DONAHER, ESQ.
25 Public Defender, County of Monroe
BY: ANDRE VITALE, ESQ.
Assistant Public Defender
Attorney for Defendant

R e p o r t e d B y : Meredith A. Bonn, RPR, CSR, NYRCR
Official Court Reporter

1 COURT SECURITY DEPUTY: Judge, can we call
2 Benjamin Brownlee?

3 THE COURT: Call the matter of Benjamin
4 Brownlee. I note the presence of Mr. Vitale, his
5 attorney. Ms. Hyatt on behalf of the People.

6 Mr. Vitale, what do you want to do this
7 morning? You had filed motions.

8 MR. VITALE: I have, your Honor. We are
9 ready to be able to have rulings made on those motions
10 and so that's my request at this point in time.

11 THE COURT: For the record, Mr. Brownlee was
12 brought up to the court. He did not enter the
13 courtroom. However, he was in the jury room behind
14 the courtroom. I did hear him becoming loud and
15 uttering obscenities so I directed that he be brought
16 back to the jail and we will proceed to motion
17 argument without him.

18 There is a request for a Huntley Hearing and
19 a Wade Hearing. Is there any opposition?

20 MS. HYATT: Before we continue, your Honor,
21 I just want to make it clear for the record,
22 Mr. Vitale, are you consenting to us doing this
23 without your client present?

24 MR. VITALE: Your Honor --

25 THE COURT: Thank you.

1 MR. VITALE: -- after having had the
2 opportunity to speak to Mr. Brownlee both in the back
3 as well as back in the holding cell, while normally it
4 would not be a request of mine to have him not be
5 present for his court appearance I -- I believe that
6 it would not be a productive appearance if that were
7 to occur.

8 THE COURT: So you are waiving?

9 MR. VITALE: That's why I am comfortable
10 moving forward without him being physically present in
11 court. I will advise him what the Court decides
12 today.

13 THE COURT: You did ask for a Wade Hearing
14 and Huntley hearing; is that correct?

15 MR. VITALE: No. No, unless I'm missing
16 something that I don't believe I was given 710.30
17 Notice which includes either a statement or an ID.

18 MS. HYATT: That's correct, your Honor.

19 THE COURT: There is a request for it.

20 MR. VITALE: I --

21 THE COURT: I'm sorry. There was a motion
22 to preclude.

23 MR. VITALE: Right.

24 THE COURT: Is there a statement?

25 MS. HYATT: There was no 710.30 Notice

1 issued, your Honor. There was no interview of Mr.
2 Brownlee after this occurred and there was no
3 identification procedure conducted given that he was
4 known to the witnesses.

5 THE COURT: What would you like to do then,
6 Mr. Vitale? Are there any discovery issues you want
7 to bring to the Court's attention?

8 MR. VITALE: Your Honor, I'm going to have
9 to take a look. I'm not actually completely familiar
10 with Department of Corrections folders. I know some
11 documents have been provided by Ms. Hyatt. I know
12 there were some administrative or I believe probably
13 some administrative proceedings that occurred after
14 that so I believe there may be additional documents,
15 but I think, I think we can work with the Department
16 of Corrections in getting all those documents because
17 I know that there were some certain determinations
18 that were made as a result of this alleged incident
19 and I don't have anything from those.

20 So I think there may be some additional
21 documents out there, but I don't think at this point
22 in time there's been any willful failure to produce
23 those. I think it's more of a matter trying to find
24 the right places to find those. I may need a subpoena
25 because DOCCS may not turn over voluntarily.

1 THE COURT: Do you want a trial date? Do
2 you want to go out 30 days to explore discovery issues
3 and then set a trial date?

4 MR. VITALE: Your Honor, if you would be
5 willing so that I can try one more time to meet with
6 Mr. Brownlee, that is a -- I make that request. It's
7 difficult to go see him because of his location, his
8 physical location, and trying to find basically six
9 hours in the day to make that trip.

10 So if the Court would give me 30 days
11 schedule to set a trial date so we can explore
12 discovery issues as well as additional sit down
13 conference with Mr. Brownlee I would greatly
14 appreciate that period of time.

15 MS. HYATT: In the alternative would the
16 Court prefer that the People issue a Body Order so he
17 be held in Monroe County for 24 hours --

18 THE COURT: I would.

19 MS. HYATT: -- to ease that process?

20 THE COURT: Do you want to do that,
21 Mr. Vitale?

22 MR. VITALE: Given what I learned in the
23 back, your Honor, I think the chances of that leading
24 to any productive conversation probably won't occur.
25 It's best any conversation between Mr. Brownlee and

1 him is where he appears more comfortable. At this
2 time that's Seneca County. I'm not saying that won't
3 change.

4 THE COURT: He's in Seneca County?

5 MR. VITALE: That's my understanding.

6 MS. HYATT: Mine as well.

7 THE COURT: Five Points.

8 MR. VITALE: That's part of the problem, I
9 was headed to Five Points facility and then I was
10 informed after that that he had been moved to the
11 County holding facility and so I have to go see him
12 there.

13 THE COURT: All right.

14 MS. HYATT: Just for the record and so that
15 all parties are on the same page when we first
16 appeared on this matter for arraignment back in June
17 and July there was some discussion about where he was
18 located and I believe Mr. Vitale may have been engaged
19 in trial at the time which made communication a little
20 more difficult.

21 He was released from the Department of
22 Corrections' custody in the middle of August and he
23 was transferred to Seneca County as he has outstanding
24 charges in Monroe, Seneca and Oneida Counties.

25 So the Seneca County detainer was the first

1 in time so he's currently being held there. He did
2 not have an opportunity -- I did not speak to the
3 prosecutors in those two counties prior to today's
4 appearance. However, I will in advance of the next
5 appearance so we know what's going on with all three
6 of his sets of charges.

7 MR. VITALE: I'm in no way saying there was
8 any miscommunication or misstatement by Ms. Hyatt. In
9 fact, after she had informed me he was at Five Points
10 I scheduled a visit at Five Points. Unfortunately,
11 they treat attorneys as regular visitors there due to
12 a --

13 THE COURT: Where is Five Points?

14 MR. VITALE: That's very close to Seneca
15 County correctional facility, but as a result of the
16 drive time and the time that I had scheduled a client
17 showed up late for a court appearance which pushed me
18 past that window I would be able to see him. After
19 that date he was then moved to Seneca County. As soon
20 as he was moved to Seneca County Ms. Hyatt informed me
21 that as well. My schedule since then has not allowed
22 me to make that trip.

23 THE COURT: October 15th.

24 MR. VITALE: Your Honor, just to be safe can
25 we do the 22nd?

1 THE COURT: 22nd.

2 MR. VITALE: I know I will be here that
3 day.

4 MS. HYATT: I will prepare a Body Order at
5 the beginning of October for him to be produced on
6 that day.

7 THE COURT: Status and set trial date.

8 MR. VITALE: Thank you, your Honor.

9 THE CLERK: Andre, you said he's in Seneca
10 County?

11 MR. VITALE: Yes.

12 MS. HYATT: There's one more question I
13 have, your Honor, before we conclude for today.
14 Defense also made a motion to dismiss under CPL 30.30
15 based on speedy trial. Is that something the Court is
16 inclined to rule on at this time?

17 THE COURT: Do you want to be heard on that,
18 Mr. Vitale?

19 MR. VITALE: Nothing in addition to the
20 papers I filed, your Honor.

21 THE COURT: I'll reserve on that and issue a
22 decision with regard to that issue.

23 MR. VITALE: Thank you, your Honor.

24 MS. HYATT: People remain ready for trial.

25 Certified to be a true and accurate transcript.

Meredith A. Bonn

Meredith A. Bonn, CSR, RPR, NYRCR

Official Court Reporter

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1 STATE OF NEW YORK : COUNTY COURT
2 COUNTY OF MONROE : CRIMINAL TERM

3 THE PEOPLE OF THE STATE OF NEW YORK

: INDMT #
: 2014-0476
: NYSID #
: 09059294J

5 - VS -

:
: ASSLT 2
: STRANGULATION

8 BENJAMIN BROWNLEE,

9 DEFENDANT :

APPEARANCE

10 Hall of Justice
11 99 Exchange Boulevard
12 Rochester, NY 14614

13 November 5, 2014

14 P R E S I D I N G :

HONORABLE CHRISTOPHER S. CIACCIO
COUNTY COURT JUDGE

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

18 SANDRA DOORLEY, ESQ.

District Attorney, Monroe County

19 BY: JENNIFER HYATT, ESQ.

Assistant District Attorney

20 TIMOTHY DONAHER, ESQ.

Public Defender, Monroe County

21 BY: ANDRE VITALE, ESQ.

22 Assistant Public Defender

24 R E P O R T E R :

LORI A. HENDERSON, CSR, RPR
Official Court Reporter

1 (The proceedings commenced with The Court and counsel
2 present.)

3 THE COURT: Where do we stand?

4 MS. HYATT: Your Honor, my understanding is that we
5 argued motions at the last court date when Mr. Brownlee was
6 here, but outside of the courtroom during that point in time.
7 We were on today both for a status update and either for
8 disposition or to set a hearing date in this matter.

9 The information I can share with The Court at this point
10 is that I had a conversation with the Corporal from the
11 Monroe County Sheriff's Office this morning. When they went
12 to retrieve Mr. Brownlee late Monday night because of the
13 holiday yesterday, he refused on several occasions to leave
14 his cell and to go with members of the Monroe County
15 Sheriff's Office to be brought to court today.

16 In the conversation I had with him, I need to draft our
17 next body order to include language that he is to be brought
18 by all means necessary in order for them to effectuate what
19 needs to happen in order to get him here, since he no longer
20 wishes to come to court.

21 So, whatever the next court date is that we have, I will
22 include that language in the body order that I present to The
23 Court for signature.

24 Also, I have an update for all parties. His charges
25 that were pending in Cayuga County were dismissed on an issue

1 of -- the statute he was charged under did not allow for a
2 transferred intent and the charges in Seneca County are still
3 pending. He was due to appear in court this past Monday
4 afternoon. I had a conversation with the prosecutor handling
5 that matter Monday morning and he indicated he would keep me
6 up to date, but I haven't heard from him after Monday's court
7 appearance. But it sounded, from my conversations with him,
8 as though this matter was headed for a trial in Seneca
9 County, as well.

10 THE COURT: So, I can set a hearing date and you can get
11 a body order and bring him for a hearing date?

12 MS. HYATT: Yes, Your Honor.

13 MR. VITALE: Your Honor, I think that's probably the
14 best way to proceed. Well, except there are no hearings.

15 THE COURT: Are you sure?

16 MR. VITALE: I'm looking at the 710.30, Your Honor.

17 MS. HYATT: There was no in-custody questioning of Mr.
18 Brownlee and so The People did not file a 710.30 Notice.

19 THE COURT: Oh, there isn't. There's no hearings.

20 MR. VITALE: Correct.

21 THE COURT: We'll set a trial date then.

22 MS. HYATT: Fair enough.

23 THE COURT: April 27th.

24 MS. HYATT: I know I'm wide open.

25 MR. VITALE: I know I am not. I start a trial with

1 Judge Randall that week with him (indicating). My belief is
2 that trial may last two weeks.

3 THE COURT: May 11th.

4 MR. VITALE: I'm scheduled to leave for Montana on the
5 12th, so it would have to be a very short trial.

6 MS. HYATT: I do not anticipate it being a lengthy
7 trial. I think one or two days is probably cutting it close.

8 THE COURT: March 23rd. That is not Easter week, is it?
9 It is Easter week. I have to leave that open. How about May
10 26th?

11 MR. VITALE: May 26th I just scheduled next door. June
12 is open.

13 THE COURT: June 1st.

14 MR. VITALE: June 1st is good.

15 MS. HYATT: I will make sure I am available.

16 THE COURT: We'll handle *Sandoval* and *Frye* matters that
17 morning.

18 MR. VITALE: Thank you, Your Honor.

19 MS. HYATT: If there's any need.

20 THE COURT: I'll set a date to bring him in and give him
21 *Parker* warnings.

22 MS. HYATT: That was -- I wondered if you wanted to set
23 a disposition date between now and then.

24 MR. VITALE: I think that would be a very good plan.

25 THE COURT: How about December 10th for *Parker* warnings?

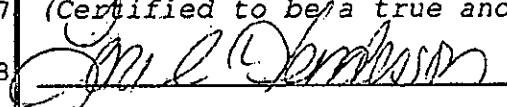
1 MR. VITALE: That works very well.

2 MS. HYATT: I may not be able to be present. I'll have
3 the calendar person stand in. I will draft that body order
4 sooner rather than later so we can have everything in place.

5 (The proceedings concluded.)

6 * * *

7 (Certified to be a true and accurate transcript.)

8 
9 Lori A. Henderson, CSR, RPR

10 DATED: November 10, 2015

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1 STATE OF NEW YORK COUNTY OF MONROE
2 COUNTY COURT
3 -----X
4 THE PEOPLE OF THE STATE OF NEW YORK : Indictment No.
5 -vs- : 2014-0476
6 BENJAMIN BROWNLEE, :
7 Defendant. : Parker warnings

8 -----X
9 Hall of Justice
10 Rochester, New York 14614
11 December 10, 2014

12 B e f o r e :

13 HON. CHRISTOPHER S. CIACCIO
14 County Court Judge

15
16 A p p e a r a n c e s :

17 SANDRA DOORLEY, ESQ.
18 District Attorney, Monroe County
19 By: ERIC HURD, ESQ.
20 Assistant District Attorney

21 TIMOTHY DONAHER, ESQ.
22 Public Defender, Monroe County
23 By: ANDRE VITALE, ESQ.
24 Attorney for the Defendant

25 Defendant Present

Reported By:
Marcella M. Schreiber, CSR
Official Court Reporter

1 THE DEPUTY: No. 4, Brownlee.

2 THE COURT: Sir, you are Benjamin Brownlee?

3 THE DEFENDANT: Yes.

4 THE COURT: You appear with your attorney,
5 Mr. Vitale?

6 THE DEFENDANT: Yes.

7 THE COURT: Mr. Hurd is here on behalf of the
8 People. This is on for --

9 MR. VITALE: Just Parker warnings.
10 Mr. Brownlee was not brought out on the last court
11 date. And so we discussed a trial date, and the Court
12 wanted to bring him back for the setting of Parker
13 warnings.

14 THE COURT: And what is holding Mr. Brownlee
15 now?

16 MR. VITALE: There's a bail here that's been
17 set at \$10,000 cash, \$20,000 bond. I don't know if
18 that was -- because I was not here that day -- as part
19 of a formal bail application or just a carrying over of
20 the bail set at the time that he was arraigned on the
21 sealed indictment.

22 He is being held in Seneca County, and I do
23 have to do some research on this, because he's
24 indicated to me there is no Seneca County hold. I
25 would have assumed that there was, which is why he

1 would be out there, but I'll need to take a look at
2 that. I know at the time that bail was set in this
3 matter, he was still a state inmate, because he was
4 finishing up a bid on a previous conviction. My
5 understanding is he has been released by Five Points
6 and is no longer a state inmate.

7 THE COURT: Okay.

8 MR. VITALE: Which is obviously why he would be
9 at a county facility, but I would -- before I can make
10 a definitive statement on that, I would obviously have
11 to make some calls on that aspect of it as well.

12 THE COURT: Mr. Brownlee also filed motions on
13 December -- I don't know the filing date.

14 MR. VITALE: I received two separate sets of
15 motions, both of which have been provided to me by the
16 Court. Those are Mr. Brownlee's motions, and I'm going
17 to remain silent on those.

18 THE COURT: Mr. Hurd, have you had a chance to
19 review those motions?

20 MR. HURD: Your Honor, it is Ms. Hyatt's case.
21 I haven't seen anything with respect to the motions. I
22 know that there is a jury trial date set for June 1st.
23 But other than that, I presume we'll go forward with
24 the Parker warnings today.

25 THE COURT: Let me first give the Parker

1 warnings.

2 Mr. Brownlee, you have the right to be present
3 in court at any proceeding, including any hearings and,
4 of course, the trial. You can, however, by your
5 conduct waive, give up, forfeit, or lose the right to
6 be present. If you are in jail and you deliberately
7 refuse to come to court when required, or in any way
8 deliberately obstruct or interfere with the efforts to
9 bring you to Court in any proceeding of your case,
10 including any hearing or trial and the sentence can and
11 will continue in your absence. If you bail out or
12 somehow are at liberty, the same thing applies. Any
13 proceeding in your case can and will continue in your
14 absence. And then a warrant for your arrest will be
15 issued, and you'll be subject to separate prosecution
16 and separate punishment for bail jumping, no matter
17 what happens in your case. Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Having received these motions, I'm
20 going to review the motions. If I feel it is necessary
21 to set a date in advance of the trial in order to
22 discuss the motions, I'll do that. As we stand right
23 now, we do have a trial date of June 1st, 2014,
24 correct?

25 MR. VITALE: Yes, Your Honor.

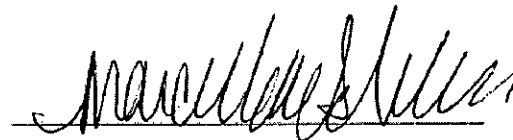
1 THE COURT: So I'll see you at that time.

2 MR. HURD: Thank you, Your Honor. I'd note the
3 People's readiness.

4 (Certified to be a true and accurate transcript.)

5

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Marcella M. Schreiber, CSR
Official Court Reporter
Dated: 10/17/2016

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1 COUNTY COURT OF THE STATE OF NEW YORK

2 COUNTY OF MONROE

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK X ASSAULT-2
5 X STRANGULATION-2

6 -vs- X
7 X INDCT. #2014-0476
8 BENJAMIN BROWNLEE, X NYSID #09059294J
9 Defendant. X

10 -----X

11 Hall of Justice
12 Rochester, New York
13 June 1 - 3, 2015

14 BEFORE: HONORABLE CHRISTOPHER S. CIACCIO

15
16 APPEARANCES: SANDRA DOORLEY, ESQ.
17 District Attorney, Monroe County
18 Appearing on behalf of the People
19 BY: JENNIFER HYATT, ESQ.
20 Assistant District Attorney
21
22 TIMOTHY P. DONAHER, ESQ.
23 Public Defender, Monroe County
24 Appearing on behalf of the Defendant
25 BY: ANDRE VITALE, ESQ.
Assistant Public Defender

REPORTED BY: CYNTHIA SCHOTT GERMUGA, C.S.R.
Official Court Reporter

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MR. VITALE: Correct, and that's

1 speaking to one of the witnesses about the
2 case before that witness testified at this trial.
3 Now you should know that the law permits the
4 prosecutor to speak to a witness about the case
5 before the witness testifies and permits the
6 prosecutor to review with the witness the questions
7 that will or may be asked at that trial, including
8 the questions that may be asked on
9 cross-examination. Speaking to a witness about
10 his or her testimony and permitting the witness to
11 review materials pertaining to the case before the
12 witness testifies is a normal part of preparing
13 for trial and is not improper. Of course, in the
14 process of trial preparation the prosecutor may
15 not suggest that the witness depart from the truth.

16 All right. Let me now instruct you on the
17 law applicable to the charged offenses, and we
18 will get into the elements of each charged crime.

19 So, the first count is assault in the second
20 degree. Under our law a person is guilty of
21 assault in the second degree when with the intent
22 to prevent a peace officer from performing a lawful
23 duty he or she causes physical injury to such
24 person.

25 Some of the terms used in this definition

1 have their own special meaning in the law. Let me
2 give you the meaning of the following terms; intent
3 and physical injury. Intent means conscious
4 objective or purpose. Thus, a person acts with
5 intent to prevent a peace officer from performing
6 a lawful duty when that person's conscious
7 objective or purpose is to prevent such person
8 from performing that lawful duty. Physical injury
9 is defined as impairment of physical condition or
10 substantial pain.

11 So, again in order for you to find the
12 defendant, Benjamin Brownlee, guilty of assault in
13 the second degree the People are required to prove
14 from all the evidence in the case beyond a
15 reasonable doubt each of the following three
16 elements. Number one, that on or about November
17 12, 2013 in the County of Monroe, the defendant,
18 Benjamin Brownlee, caused physical injury to
19 New York State Corrections Officer John
20 Buczek. Number two, that New York State Corrections
21 Officer John Buczek was a peace officer. And,
22 three, that the defendant caused such physical
23 injury with the intent to prevent New York State
24 Corrections Officer John Buczek from performing a
25 lawful duty.

1 Therefore, if you find that the People have
2 proven beyond a reasonable doubt each of those
3 elements, you must find the defendant, Benjamin
4 Brownlee, guilty of the crime of assault in
5 the second degree as charged in the first
6 count.

7 On the other hand, if you find that the People
8 have not proven beyond a reasonable doubt any one
9 or more of those elements, then you must find the
10 defendant not guilty of the crime of assault in
11 the second degree as charged in the first count.

12 All right. The second count of the
13 indictment is strangulation in the second degree.
14 Under our law a person is guilty of strangulation
15 in the second degree when with the intent to
16 impede the normal breathing or circulation of the
17 blood of another person he or she applies pressure
18 on the throat or neck of such person and thereby
19 causes stupor or loss of consciousness for any
20 period of time. Some of the terms used in this
21 definition have their own special meaning, and I
22 will now give you the meaning of the following
23 terms; intent and physical - - I'm sorry - - intent.
24 Intent means conscious objective or purpose. Thus,
25 a person acts with itent to impede the normal

1 breathing or circulation of the blood of another
2 person when his or her conscious objective or
3 purpose is to do so.

4 So, in order for you to find the defendant,
5 Benjamin Brownlee, guilty of this crime the People
6 are required to prove from all the evidence in
7 the case beyond a reasonable doubt each and every
8 one of following three elements. Number one,
9 that on or about November 12, 2013 in the County of
10 Monroe the defendant, Benjamin Brownlee, applied
11 pressure on the throat or neck of Brandon Short.
12 Number two, that the defendant, Benjamin Brownlee,
13 did so with the intent to impede the normal
14 breathing or circulation of the blood of such
15 person. And, number three, that the defendant
16 thereby caused stupor or loss of consciousness
17 for any period of time. Therefore, if you find
18 the People have proven beyond a reasonable doubt
19 each of those three elements, you must find the
20 defendant guilty of the crime of strangulation
21 in the second degree as charged in the second
22 count.

23 On the other hand, if you find the People have
24 not proven beyond a reasonable doubt any one or
25 more of those three elements you must find the

1 defendant not guilty of the crime of strangulation
2 in the second degree as charged in the second
3 count.

4 Now I'm submitting for your consideration the
5 offense, which I didn't mention earlier, of criminal
6 obstruction of breathing or blood circulation.
7 This crime is called a lesser included offense
8 of strangulation in the second degree. I will
9 charge you with criminal obstruction of breathing or
10 blood circulation, which is a lesser included
11 offense of strangulation in the second degree.
12 As a result, the law requires that you, the jury,
13 consider strangulation in the second degree and
14 the lesser included offense of criminal obstruction
15 of breathing or blood circulation in this matter.
16 You can find the defendant not guilty of both of
17 those charges or guilty of one of the two charges.
18 So, what you do is you first consider the charged
19 crime in the indictment of strangulation in the
20 second degree and will render a verdict of guilty
21 or not guilty, and it is made clear on the verdict
22 sheet that you will get. If your verdict is guilty
23 on strangulation in the second degree you do not
24 consider the lesser included offense of criminal
25 obstruction of breathing or blood circulation.

1 However, if your verdict on the charged count,
2 which is strangulation in the second degree, if
3 your verdict is not guilty on that count you then
4 will consider whether the defendant is guilty
5 beyond a reasonable doubt of the lesser included
6 offense of criminal obstruction of breathing or
7 blood circulation.

8 So, let me read the elements of that offense
9 and you will see the difference. The lesser
10 included offense is criminal obstruction of
11 breathing or blood circulation. Under our law a
12 person is guilty of criminal obstruction of
13 breathing or blood circulation when with the intent
14 to impede the normal breathing or circulation of
15 the blood of another person he applies pressure on
16 the throat or neck of such person. The term intent
17 used in this definition has its own special
18 meaning which is really the meaning that it has on
19 the charged counts. Intent means conscious
20 objective or purpose. Thus, a person acts with
21 intent to impede the normal breathing or circulation
22 of the blood of another person when his or her
23 conscious objective or purpose is to do so.

24 In order for you to find the defendant guilty
25 of this crime the People are required to prove

1 from all the evidence in the case beyond a
2 reasonable doubt both of the following two elements.
3 There is only two elements in this lesser included
4 offense. Number one, that on or about November 12,
5 2013 in Monroe County the defendant, Benjamin
6 Brownlee, applied pressure on the throat or neck
7 of Brandon Short. Number two, that the defendant
8 did so with the intent to impede the normal
9 breathing or circulation of the blood of such
10 person. If you, therefore, find the People have
11 proven beyond a reasonable doubt each of those
12 two elements, you must find the defendant guilty of
13 the crime of criminal obstruction of breathing or
14 blood circulation as charged in the lesser
15 included count and, of course, which you only
16 consider if you found the defendant not guilty
17 with regard to strangulation in the second degree.
18 So, you only move to that lesser included offense
19 if your verdict on strangulation in the second
20 degree is not guilty. If you find the defendant
21 guilty of strangulation in the second degree, you
22 stop there.

23 On the other hand, if you find the
24 People have not proven beyond a reasonable doubt
25 either one of both of those elements of criminal

1 obstruction of breathing or blood circulation, you
2 must find the defendant not guilty of that
3 crime as charged in the lesser included count.

4 Now your verdict on each count that you
5 consider, whether guilty or not guilty, must be
6 unanimous. That is, each and every juror must
7 agree to the verdict, and that applies to the
8 first count of the indictment, which is assault
9 in the second degree, the second count of the
10 indictment, which is strangulation in the second
11 degree, and the lesser included offense of
12 criminal obstruction of breathing or blood
13 circulation. So, if you do get to that count,
14 your verdict must be unanimous. In other words,
15 each and every juror must agree to it. To reach
16 a unanimous verdict you must deliberate with the
17 other jurors. That means you should discuss the
18 evidence and consult with each other. You must
19 listen to each other and you must give each
20 other's views careful consideration and you must
21 reason together when considering the evidence.
22 And when you deliberate you should do so with a
23 view toward reaching an agreement, if that can
24 be done without surrendering individual
25 judgment. Each of you must decide the case for

***** JUNE 3, 2015 *****

(JURY CONTINUES DELIBERATIONS)

(WHEREUPON COURT RECONVENED AT APPROXIMATELY 10:55 AM)

THE COURT: I note the presence of the defendant. This is the matter of the People versus Benjamin Brownlee. Counsel is present. Ms. Hyatt is here only behalf of the People. I do have a note that was signed at 9:27 this morning. It reads as follows. We the jury request definition of assault second degree. So, they want a reading of that again. So, I can do that at this time. Any additions or changes you want me to make to that reading?

MR. VITALE: No, Your Honor.

MS. HYATT: No, Your Honor.

THE COURT: Bring the jury out. What do you want to do with the alternates? Do you want to keep them until lunch?

MR. VITALE: At this point in time they have been back there long enough time. I wouldn't allow an alternate to go in.

THE COURT: I will release the alternates at this time. Any objection, Ms. Hyatt?

MS. HYATT: I believe defense counsel has an appropriate request there. I will defer

1 reached a verdict. I will bring the jury out and
2 have my clerk take the verdict.

3 (WHEREUPON THE JURY ENTERED THE COURTROOM AT APPROXIMATELY
4 11:20 AM)

5 THE COURT: You may be seated. I note
6 the jury is present and accounted for. Members
7 of the jury, I do have your note at 11:05. Again
8 thank you for your patience. It says we the jury
9 request: we made a decision. I assume that
10 means you reached a verdict in the case. So, I will
11 now ask the clerk of the court to take the verdict.

12 COURT CLERK: Yes, Your Honor. Would the
13 foreperson please rise. In the matter of the
14 People of the State of New York versus Benjamin
15 Brownlee, in count one of the indictment, assault
16 in the second degree, how do you find the
17 defendant; not guilty or guilty?

18 THE FOREPERSON: Not guilty.

19 COURT CLERK: In the second count of the
20 indictment, strangulation in the second degree,
21 how do you find the defendant; not guilty or
22 guilty?

23 THE FOREPERSON: Not guilty.

24 COURT CLERK: The lesser included matter
25 for the second count, criminal obstruction of

THE FOREPERSON: Guilty.

(ALL TWELVE JURORS RESPONDED AFFIRMATIVELY)

MS. HYATT: No, judge.

THE COURT: Mr. Vitale?

MR. VITALE: No, Your Honor.

(WHEREUPON THE JURY EXITED THE COURTROOM)

1 THE COURT: For the record, the trial
2 order of dismissal made previously at the close
3 of the People's case is denied. Anything you want
4 to put on the record, Mr. Vitale?

5 MR. VITALE: Your Honor, a couple things.
6 Number one, given this is a misdemeanor conviction,
7 Mr. Brownlee has more than the maximum amount of
8 time that he could serve in on the sentence. He
9 was arraigned on this matter in June of 2014,
10 which is past the eight month period. Either
11 I request he be sentenced to a period of time
12 served, or if the court wants to request a
13 formal PSI I would request he be released on
14 this charge given he has been held past the
15 period.

16 THE COURT: Ms. Hyatt?

17 MS. HYATT: Nothing, Your Honor.

18 THE COURT: You would agree he has been
19 held that long a period of time?

20 MS. HYATT: I don't have my file with me.

21 THE COURT: I do and he has.

22 MS. HYATT: Okay. Then I obviously can't
23 argue on that point.

24 THE COURT: I don't know that you need to
25 waive a PSI, Mr. Vitale. Do you need to waive

1 a PSI?

2 MR. VITALE: For time served typically
3 we don't, but we are willing to waive the PSI.

4 THE COURT: You move sentencing then,
5 Ms. Hyatt?

6 MS. HYATT: Yes, judge.

7 THE COURT: Do you have anything to
8 say?

9 MS. HYATT: No, Your Honor.

10 THE COURT: Mr. Vitale, do you have
11 anything to say on behalf of your client?

12 MR. VITALE: I would request he be
13 sentenced to a period of time served and any
14 surcharge and additional fees be reduced to
15 a judgment.

16 THE COURT: All right. Mr. Brownlee, do
17 you have anything to say on your own
18 behalf?

19 MR. BROWNLEE: Can I talk it over with my
20 attorney before I say it, please?

21 THE COURT: Before you what?

22 MR. BROWNLEE: Can I talk it over with my
23 attorney before I say it?

24 THE COURT: Sure.

25 (PAUSE IN THE PROCEEDING)

1 MR. BROWNLEE: Your Honor, I would like to
2 say thank you and I appreciate from the People and
3 my Public Defender for doing everything possible
4 and also for the Grand Jury for doing what was
5 right and what was the facts. Thank you.

6 THE COURT: Thank you. It is the sentence
7 and judgment of this court that I sentence you to
8 one year in the Monroe County Jail, time served to
9 apply.

10 COURT CLERK: There is a surcharge.

11 THE COURT: Mr. Vitale, there is a two
12 hundred dollar mandatory surcharge. I will
13 direct that be reduced to judgment.

14 MR. VITALE: Thank you, Your Honor.

15 THE COURT: Thank you, everyone.

16 ***** CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT *****

17
18 
19 CYNTHIA SCHOTT GERMUGA, OFFICIAL SENIOR COURT REPORTER
20
21
22
23
24
25

Sentence

THE PEOPLE OF THE STATE OF NEW YORK
-VS-

Defendant.

~~SECURING ORDER / CUSTODY~~

RELEASE ORDER ➔ DEFENSE ATTORNEY TO COMPLETE IN FULL

Indictment/SCI # 2014-0476 05-21-2014
Filed

 Pre-Indictment D.O.B.

Complete this section or attach Disposition Memo

CR #'s	CHARGES
13-380033	PL-120-05-05 -DF- 2-ASLT- 2:INT CAUS PH - 1 CT(S)
	PL-121-12 -DF- STRANGULATION 2ND - 1 CT(S)
	Guilty — <u>Crim OBstruction of Breathing</u>
	<u>PL-121-11-A or Blood Circulation</u>

An (Indictment) (SCI) (Pre-Indictment charges) having been filed with the (Supreme) (County) (City/Town of _____) Court charging the above-named Defendant with the offense(s) of as above

_____ and said Defendant having been arraigned therein, it is hereby
ORDERED that said Defendant be and hereby is held by the Court for further proceedings hereunder and

☐ That the application for admission to bail is hereby granted and that the amount of said bail is fixed at \$_____ cash, or \$_____ Bond. Now upon posting of such bail and full compliance thereof with the Securing Order, the Defendant is thereupon authorized to be at liberty and the Sheriff of the County of Monroe is thereupon directed to discharge the Defendant from custody.

That said Defendant be and hereby is held by this Court for further proceedings hereunder and that said Defendant is committed to the Sheriff of the County of Monroe, to appear before this Court at such time as may be required unless sooner released on bail, recognizance, or other such Order of this Court.

□ That said Defendant having been released on this date by Hon. Claudio and said defendant now being in custody of the Sheriff of Monroe County, It is ordered that the Sheriff release from his custody the said defendant.

☐ ROR ☐ Pre-Trial Release ☐ Acquittal ☐ Dismissal ☐ Time Served ☐ Other

☐ Bail in the amount of \$_____, previously posted in the _____ Court is reinstated and continued.

Attorney's Name _____ Phone # _____

Dated at Rochester, NY

Hon.

~~Supreme Court Justice / County Court Judge~~

☐ Next Court Date _____ @ _____ am / pm Reason _____

☒ Sentence (optional) 1 yr M.C., Time Served To Apply
☐ Youthful Offender 05-11-11 8:00 AM n/c -

Cash Bail Posted on _____ (date) with the Monroe County Sheriff's Department _____

by: _____ (name) _____ (address)

CPL Sections 210.15(6) & 520.10 (Rev 10/2011)

UNIFORM SENTENCE & COMMITMENT

UCS 854 (8/2011)

STATE OF NEW YORK
COUNTY COURT: COUNTY OF MONROE
PRESENT: HON. CHRISTOPHER S. CIACCIO

Court Reporter: CYNTHIA S. GERMUGA
Superior Ct. Case #: 2014-0476

The People of the State of New York

Accusatory Instrument Charge(s) Law/Section Subdivision:
1 2-ASLT- 2:INT CAUS PH IN PL-120.05-03

-v- BENJAMIN BROWNLEE

2 Strangulation 2 PL-121.12
3 _____
4 _____
5 _____

M 09059294J
SEX DOB NYSID CJ TRACKING #

Date of offense: 11-12 2013

THE ABOVE NAMED DEFENDANT HAVING BEEN CONVICTED BY (☐ PLEA OR ☒ VERDICT), THE MOST SERIOUS OFFENSE BEING A (☐ FELONY OR ☒ MISDEMEANOR OR ☐ VIOLATION), IS HEREBY SENTENCED TO:

Crimes Count Law/Section SBN, Rate Minimum Maximum
& Subdivision or Terror Term Term ☒ Definite (B-M, Y) Post-Rel.
☐ Indeterminate (Y) * Superv.

CRIM OBSTRUC BREATH/ABLY 2 PL-121.11-6A - - Y - Y 1 B-M Y - Y

*NOTE: For each DETERMINATE sentence imposed, a corresponding period of POST-RELEASE SUPERVISION MUST be indicated [PL 570.45].

- ☐ Counts _____ shall run CONCURRENTLY with each other
- ☐ Count(s) _____ shall run CONSECUTIVELY to count(s) _____
- ☐ Sentence imposed herein shall run CONCURRENTLY with _____, and/or CONSECUTIVELY to _____
- ☐ Sentence imposed herein shall include a CONSECUTIVE _____ term of (☐ PROBATION OR ☐ CONDITIONAL DISCHARGE) with an Ignition Interlock Device condition, that shall commence upon the defendant's release from imprisonment [PL 560.21]
- ☐ Conviction includes: WEAPON TYPE _____ and/or DRUG TYPE _____
- ☐ Charged as a JUVENILE OFFENDER - Age at time crime committed: _____
- ☐ Adjudicated a YOUTHFUL OFFENDER [CPL 5720.20] ☐ Certified a SEX OFFENDER [Cor. Law §168-d]
- ☐ Sentence of PAROLE SUPERVISION [CPL 5410.91] ☐ CASAT ordered [PL 560.04(5)]
- ☐ Re-sentenced as a PROBATION VIOLATOR [CPL 5410.70] ☐ SHOCK INCARCERATION ordered [PL 560.04(7)]
- As a ☐ second ☐ second violent ☐ second drug ☐ second drug/prior VFO ☐ predicate sex offender ☐ predicate sex offender/prior VFO ☐ second child sexual assault ☐ persistent ☐ persistent violent ☐ FELONY OFFENDER

Paid	Not Paid	Deferred [CPL 5420.40(5)]		Paid	Not Paid	Deferred [CPL 5420.40(5)]	
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mandatory Surcharge \$175.00	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Crime Victim Assistance Fee \$25.00
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Fine \$0.00	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Restitution \$0.00
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNA \$0.00	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sex Offender Registration \$0.00
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DWI/Other \$0.00	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Supplemental Sex Off. Victim \$0.00

THE SAID DEFENDANT BE AND HEREBY IS COMMITTED TO THE CUSTODY OF THE:

☐ NYS Department of Correctional Services (NYSDOCS) until released in accordance with the law, and being a person sixteen (16) years or older not presently in the custody of NYSDOCS, (the County Sheriff) NYC Dept of Correction) is directed to deliver him to the custody of NYSDOCS as provided in 7 NYCRR Part 103.

- ☐ NYSDOCS until released in accordance with the law, and being a person sixteen (16) years or older and is presently in the custody of NYSDOCS, said defendant shall remain in the custody of NYSDOCS.
- ☐ NYS Office of Children and Family Services in accordance with the law being a person less than sixteen (16) years of age at the time the crime was committed

☒ Monroe County Jail / Rochester Correctional Facility.

Commitment, Order of
Protection &
Pre-Sentence Report
received by
Correctional Authority
as indicated:

Official Name

Shield No.

Pre-Sentence Investigation Report Attached: ☐ YES ☒ NO ☐ Amended Commitment:
Order of Protection Issued: ☐ YES ☒ NO
Order of Protection Attached: ☐ YES ☒ NO Original Sentence 06-03-2015

06-08-2015 Lisa Baker

by: Lisa M. Baker

Court Assistant

Monroe County Sheriff's Office
Jail Records Unit

Jail Bureau

To: Benjamin Brownlee ID#: 377572 Location: 3

Re: Sentence Term Calculation

On 6/3/2015 you were sentenced to 365 days

You may EARN the following good time credit if your behavior is in compliance with facility rules & regulations outlined in the inmate handbook. 121 days good time

Jail time is applicable credit for time incarcerated on any charge(s) satisfied by your plea or conviction. You were credited with the following jail time on this sentence.

From	<u>6/18/14</u>	To	<u>6/3/15</u>	days	<u>14 Days Good time</u>
From		To		days	<u>Lost per infraction</u>
From		To		days	<u>15 - 3617</u>
From		To		days	<u>Commit MUR</u>
From		To		days	<u>6/2014 Sent</u>
From		To		days	<u>by court 6/18/15</u>
From		To		days	<u>7 TIMES</u>
From		To		days	
From		To		days	
From		To		days	
From		To		days	
From		To		days	

Total # of days jail time credit: 0 days.

If you served any time in another facility or lockup that resulted in the current sentenced, please submit a Jail Time Discrepancy Form through your housing supervisor for review & investigation.
Calculation

365 days - term of sentence
minus (-) 121 days - maximum number of good time pursuant to NYSCOC 7007
minus (-) 0 days - total jail time credit for time served

leaves you (=) 244 days remaining to serve from 6/3/2015

*** Verify values on JMS Sentence Calculation Screen

THIS MAKES YOUR OUTDATE:
2/15/16

Print 2 copies to housing officer - copy to inmate
Signed acknowledgement back to Records for file

Date June 3, 2015 Staff Tompkins 3366

I certify that I have received a copy of this form and that the information contained in it has been explained to me.

Inmate's Signature: [Signature]

Date: 6/6/15

Copy of Sentence Term Calculation Release Date Confirmation (JB-414-10).xls

JB-414-10

To: Jail Records Unit

FROM: Hearing Officer

DATE: 6/10/2015

SUBJECT: Loss of Good Time


Per Infraction # 15-3617

Regarding inmate: BENJAMIN BROWNLEE ID#: 377572

The above named inmate has lost good time as a result of an order of
Disciplinary
Sanction.

Please deduct 14 days good time.

Approved By:

 6/10/15

Memo for Inmate Record:

Previously credited good time: 121Good time lost: 14New Good Time balance: 107NEW OUTDATE 2 / 15 / 16Outdate Computed by: Cpl. Schreiner 3211JMS Sentence Calculation Updated: 6 / 11 / 15☐ Faxed to Jail Records

PRINTED: 06/10/15

To be argued by:
BENJAMIN L. NELSON
Estimated time: 5 minutes

Docket No. KA 15-01257

Supreme Court of the State of New York
Appellate Division, Fourth Department

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff-Respondent,

-vs-

BENJAMIN BROWNLEE,

Defendant-Appellant.

BRIEF FOR DEFENDANT-APPELLANT

Monroe County Indictment No. 2014-0476

TIMOTHY P. DONAHER
Monroe County Public Defender
Attorney for Defendant-Appellant
BY: BENJAMIN L. NELSON
Assistant Public Defender
10 N. Fitzhugh Street
Rochester, New York 14614
(585) 753-4069
benjaminnelson@monroecounty.gov

JUL 19 2019

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1239

KA 15-01257

PRESENT: WHALEN, P.J., SMITH, CURRAN, WINSLOW, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

BENJAMIN BROWNLEE, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (BENJAMIN L. NELSON OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (LISA GRAY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Christopher S. Ciaccio, J.), rendered June 3, 2015. The judgment convicted defendant upon a jury verdict of criminal obstruction of breathing or blood circulation.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him after a jury trial of criminal obstruction of breathing or blood circulation (Penal Law § 121.11 [a]). We affirm.

We reject defendant's contention that the prosecution committed a Brady violation by belatedly disclosing certain medical records that purportedly established the victim's lack of injuries following the alleged altercation with defendant. "To establish a Brady violation warranting a new trial, the defendant must show that (1) the evidence is favorable to the defendant because it is either exculpatory or impeaching in nature; (2) the evidence was suppressed by the prosecution; and (3) prejudice arose because the suppressed evidence was material" (*People v Ulett*, 33 NY3d 512, 515 [2019] [internal quotation marks omitted]; see *Brady v Maryland*, 373 US 83, 87 [1963]).

Here, the medical records documenting the victim's lack of injuries were favorable to defendant inasmuch as they "tend[ed] to show that [he was] not guilty" (*People v Garrett*, 23 NY3d 878, 886 [2014], rearg denied 25 NY3d 1215 [2015] [internal quotation marks omitted]). However, the People's failure to disclose the medical records until six days before trial did not constitute the suppression of those records because defendant was "afforded a meaningful opportunity to use [the records] to cross-examine the People's witnesses or as evidence-in-chief" (*People v Burroughs*, 64 AD3d 894,

898 [3d Dept 2009], lv denied 13 NY3d 794 [2009]; see *People v Cortijo*, 70 NY2d 868, 870 [1987]; cf. *People v Carver*, 114 AD3d 1199, 1199 [4th Dept 2014]).

Moreover, even assuming, arguendo, that the prosecution's delay in disclosure did constitute suppression, we conclude that the records were not material because there was no " 'reasonable possibility' that the failure to disclose the medical records contributed to the verdict" (*People v Vilardi*, 76 NY2d 67, 77 [1990]; see generally *People v Rong He*, 34 NY3d 956, 959 [2019]; *People v McCray*, 23 NY3d 193, 198-199 [2014], rearg denied 24 NY3d 947 [2014]; *People v Fuentes*, 12 NY3d 259, 264-265 [2009], rearg denied 13 NY3d 766 [2009]). Finally, we further conclude that any alleged Brady violation here is harmless. The People presented overwhelming evidence of defendant's guilt—namely, the consistent testimony of three eyewitnesses who described defendant's attack on the victim—and there is no reasonable possibility that any error contributed to the verdict (see *People v Robinson*, 267 AD2d 981, 981 [4th Dept 1999], lv denied 95 NY2d 838 [2000]).

Entered: March 13, 2020

Mark W. Bennett
Clerk of the Court

State of New York Court of Appeals

BEFORE: HONORABLE PAUL G. FEINMAN

THE PEOPLE OF THE STATE OF NEW YORK,

-against- Respondent,

BENJAMIN BROWNLEE,

Appellant.

**ORDER
DENYING
LEAVE**

Appellant having applied for leave to appeal to this Court pursuant to Criminal Procedure Law § 460.20 from an order in the above-captioned case;*

UPON the papers filed and due deliberation, it is

ORDERED that the application is denied.

Dated: July 14, 2020



Associate Judge

*Description of Order: Order of the Appellate Division, Fourth Judicial Department, entered March 13, 2020, affirming a judgment of County Court, Monroe County, rendered June 3, 2015.

COPY SERVED WITH N/E 7/21/2020
EB

This case involves BENJAMIN BROWNLEE, Case Number 14-076

06-30-2014 1:59PM ROW/ARRAIGNMENT

ADA: DEF ATTY:
REPT1: REPT2:

07-07-2014 1:59PM ROW/ARRAIGNMENT DENNIS F BENDER

ADA: MARK SINKIEWICZ DEF ATTY: PUBLIC DEFENDER
REPT1: GABRIELLE SCIOTTI REPT2:

09-08-2014 2:00PM MOTIONS DENNIS F BENDER

ADA: MARK SINKIEWICZ DEF ATTY: PUBLIC DEFENDER
REPT1: GABRIELLE SCIOTTI REPT2:

11-03-2014 2:00PM MOTIONS DENNIS F BENDER

ADA: MARK SINKIEWICZ DEF ATTY: PUBLIC DEFENDER
REPT1: GABRIELLE SCIOTTI REPT2:

01-13-2015 10:00AM HEARING DENNIS F BENDER

ADA: MARK SINKIEWICZ DEF ATTY: JOHN NABINGER
REPT1: GABRIELLE SCIOTTI REPT2:

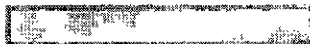
09-29-2015 9:59AM PLEA OR MOTIONS DENNIS F BENDER

ADA: MARK SINKIEWICZ DEF ATTY: JOHN NABINGER
REPT1: GABRIELLE SCIOTTI REPT2:

12-21-2015 2:05PM APPEARANCE DENNIS F BENDER

ADA: MARK SINKIEWICZ DEF ATTY: JOHN NABINGER
REPT1: GABRIELLE SCIOTTI REPT2:

This person was born on



STATE OF NEW YORK
COUNTY COURT: SENECA COUNTY

2014 JUN 10 PM 4:06

SENECA COUNTY
CLERK'S OFFICE

The People of the State of New York

Against

Indictment No. 14- 076

Benjamin Brownlee,

Defendant.

FIRST COUNT:

48562

The Grand Jury of the County of Seneca by this Indictment accuses

BENJAMIN BROWNLEE

of the crime of AGGRAVATED HARASSMENT OF AN EMPLOYEE BY AN INMATE, a class E felony, pursuant to Section 240.32 of the Penal Law of the State of New York and that such crime was committed as follows:

That on or about March 27, 2014, while at the Five Points Correctional Facility, Town of Romulus, Seneca County, New York, the defendant, an inmate of said correctional facility, with intent to harass, annoy, threaten or alarm a person whom he knows or reasonably should know is an employee of such facility, caused or attempted to cause such employee to come into contact with blood, seminal fluid, urine or feces, by throwing, tossing, or expelling such fluid or material, to wit: the defendant threw urine at Correctional Officer Mark Thurston, an employee of Five Points Correctional Facility.

THE PEOPLE ANNOUNCE THEIR READINESS FOR TRIAL

Merrin L. Zuma
Foreperson

[Signature]
Assistant District Attorney

RECEIVED
2014 JUN 10 PM 3:58
SENECA COUNTY
SUPREME & COUNTY COURTS

AMENDED
STATE OF NEW YORK - COUNTY OF SENECA
SECURING ORDER COMMITMENT

The People of the State of New York

-vs-

BENJAMIN BROWNLEE

IND# 14-076

Filed 06-10-2014

Pre-Indictment _____

DOB [REDACTED]

A(n) Indictment having been filed with the Court charging the above-named Defendant with the offense(s) of

AGG HARASS EMPLOYEE BY IN-1ct(s)

and said Defendant having been arraigned therein and the future attendance of Defendant before this Court being required thereunder; now it is therefore

ORDERED, that said Defendant be and hereby is held by this Court for further proceedings hereunder and that said Defendant is committed to the County Sheriff, to appear before this Court at such time as may be required unless sooner released on bail, recognizance, or other such Order of this Court.

Dated the 28 day of July 2014
VILLAGE OF WATERLOO, New York



COUNTY Court JUDGE

Next Court Date _____ Reason _____

Sentence _____

Youthful Offender _____

UNIFORM SENTENCE & COMMITMENT

UCS 854 (2/2008)

STATE OF NEW YORK
COUNTY COURT: COUNTY OF SENECA
PRESENT: DENNIS F BENDER, JUDGE

Court Reporter: GABRIELLE SCIOTTI
Superior Ct. Case #: 14-076

The People of the State of New York

BENJAMIN BROWNLEE

M ☐ DOB: ☐ 09059294J 56697928N
SEX: DOB: NYSID CJ TRACKING #

Date of offense: 03-27-2014 to

Accusatory Instrument Charge(s) Law/Section Subdivision:
1 AGG HARASS EMPLOYEE BY IN PL-240.32 *Reduced to*

2 *Attempt Agg Harassment Employee PL-110-240.32*

3. _____

4. _____

THE ABOVE NAMED DEFENDANT HAVING BEEN CONVICTED [☒ PLEA OR ☐ VERDICT], THE MOST SERIOUS OFFENSE
BEING A ☒ FELONY OR ☐ MISDEMEANOR OR ☐ VIOLATION, IS HEREBY SENTENCED TO:

Name of offense Count Law/Section SMF, Rate Minimum Maximum ☐ Definite (D M Y) Post-Rel
Number & Subdivision or Terror Period Term ☐ Determinate (Y) Superv.

ATT AGG HARASS EMPLOYEE1 PL-110-240.32 _____ Y _____ Y 6M _____ Y

☐ Counts _____ shall run CONCURRENTLY with each other

☐ Count(s) _____ shall run CONSECUTIVELY to count(s) _____

☐ Sentence imposed herein shall run CONCURRENTLY with _____ and/or CONSECUTIVELY to _____

☐ Conviction includes: WEAPON TYPE _____ and/or DRUG TYPE _____

☐ Charged as a JUVENILE OFFENDER

☐ Court certified the defendant a SEX OFFENDER

- Age at time crime committed: _____

(Cor. Law § 168-d)

☐ Adjudicated a YOUTHFUL OFFENDER (CPL § 720.20)

☐ Re-sentenced as a PROBATION VIOLATOR (CPL § 410.70)

☐ Execute as a sentence of PAROLE SUPERVISION (CPL § 410.91)

☐ CASAT ordered (PL § 60.04(6))

As a ☐ second ☐ second violent ☐ second drug ☐ second drug/prior VFO ☐ predicate sex offender
☐ predicate sex offender/prior VFO ☐ second child sexual assault ☐ persistent ☐ persistent violent FELONY OFFENDER

Paid	Not Paid			Paid	Not Paid		
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mandatory Surcharge	\$175.00	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Crime Victims Assistance Fee	\$25.00
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Fine	\$0.00	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Restitution	\$0.00
<input type="checkbox"/>	<input checked="" type="checkbox"/>	DNA Fee	\$50.00	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Sex Offender Registration Fee	\$0.00
<input type="checkbox"/>	<input checked="" type="checkbox"/>	DWI/Other	\$0.00	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Supplemental Sex Off. Victim Fee	\$0.00

THE SAID DEFENDANT BE AND HEREBY IS COMMITTED TO THE CUSTODY OF THE:

☐ NYS Department of Correctional Services (NYSDOCS) until released in accordance with the law, and being a person sixteen (16) years or older not presently in the custody of the NYSDOCS (the County Sheriff) (New York City Department of Corrections is directed to deliver him to the custody of the NYSDOCS as provided in 7 NYCRR Part 103.

☐ NYSDOCS until released in accordance with the law, and being a person sixteen (16) years or older and is presently in the custody of the NYSDOCS, said defendant shall remain in the custody of NYSDOCS.

☐ NYS Office of Children and Family Services in accordance with the law being a person less than sixteen (16) years of age at the time the crime was committed.

☒ Seneca County Jail / Correctional Facility.

TO BE HELD UNTIL THE JUDGMENT OF THIS COURT IS SATISFIED.

REMARKS: _____

Pre-Sentence Investigation Report Attached: ☐ YES ☒ NO ☐ SHOCK INCARCERATION recommended

Order of Protection Issued: ☐ YES ☒ NO ☐ Amended Commitment:

Order of Protection Attached: ☐ YES ☒ NO Original Sentence Date: 09-29-2015

09-29-2015 SUSAN M. MALESKI
Date Clerk of the Court

by: *Dennis F Bender*
Signature

BY COURT OFFICE ASSISTANT
Title

Commitment, Order of
Protection
Pre-Sentence Report
Correctional Authority
as indicated:

Official Name

Shield No.

STAT. OF NEW YORK - COUNTY OF SENECA
COUNTY COURT - CERTIFICATE OF CONVICTION

BENJAMIN BROWNLEE

INDEX # 485627

FILED 06-10-2014
CRIME DATE 03-27-2014

IND # 14-076

DOB

NYSID # 09059294J

JUDGE: DENNIS F BENDER

Court Reporter: GABRIELLE SCIOTTI

ORIGINAL OFFENSE # 1: AGG HARASS EMPLOYEE BY IN/1 ct(s) PL-240.32 -EF-

Reduced to: ATT AGG HARASS EMPLOYEE/1 ct(s) PL-110-240.32 -AM-

Disposition: PLED GUILTY 09-29-2015

Sentenced: 09-29-2015

Custody/Time: 6M CUSTODY

Surcharge Imposed: \$175.00
CVAF Imposed: \$25.00

DNA Fee: \$50.00

Court Clerk's Certification: I certify that this document reflects a true and accurate record of the above defendant, filed with the County Clerk's Office by the Court.

2015 OCT 19 AM 10:36

SENECA COUNTY
CLERK'S OFFICE

Suzanne C. Leisenring
SUZANNE C. LEISENRING
SR COURT OFFICE ASSISTANT

Seneca County Sheriff's Office

Romulus, New York 14541

Inmate Release Date Confirmation Form

CHN: 17193
Booking Number: 201400456
To: BROWNLEE, Benjamin J
From: Kierst, Lt
Completed On: September 01, 2021
Issued Date:

MAXIMUM SENTENCE SERVED Date of: 02/06/2015

You may EARN Good Behavior Allowance, if your behavior is in line with the Rules and Regulations of Seneca County Sheriff's Office.

You may earn 61 days Good Time Credit, resulting in a

MINIMUM SENTENCE SERVED Date of: 12/07/2014

If you have any days served at another Facility, or City Lock-up, that resulted in the current sentence, you shall refer to the Inmate Handbook to obtain this credit.

Charge: Aggravated Harassment-1st Degree

Docket Number:

Indictment Number:

Date of Arrival: 08/08/2014

Sentence Start Date: 09/29/2015

Sentence Length: 183

Time Served: 417

Good Time: 61

Days Suspended: 0

Weekend/Holidays: 0

Other: 0

Notes:

Prior time served - 417 days.

08/08/2014 - 09/28 = 417 days.

I certify that I have received a copy of this form and that the information contained in it has been explained to me.

Inmate's Signature: _____

BROWNLEE, Benjamin J

cc: Inmate's File



Superior Court of California County of Sacramento

720 Ninth Street
Sacramento CA 95814

This letter is confirmation that the annexed instrument (inclusive) is a correct copy of the original on file in the Sacramento Superior Court file.

Sacramento Superior Court in and for the County of Sacramento, State of California.

CASE NAME BENJAMIN BROWNLEE

CASE NUMBER 16FE004445

ATTEST CERTIFIED DATE 08-31-2021

BY *J. Watkins*  DEPUTY CLERK

TOTAL NUMBER OF PAGES 6

720 Ninth Street • Criminal/Civil Records • Sacramento, CA 95814
TELEPHONE (916) 874-5664

CR-282 (revised 01/01/06)

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO
MINUTE ORDER**

DEFENDANT'S NAME BROWNLEE, BENJAMIN XREF: 5050704	SECTION(S) VIOLATED 1. 2. 3. 4. 5. 6.	DOCKET NO. 16FE04445 BOND #:
---	---	--

PROSECUTOR DDA: S. AARASETH	DEFENSE ATTORNEY APD: C. RYAN	JURY TRIAL DATE
------------------------------------	--------------------------------------	-----------------

DATE	JUDGE	CSR#	DEPT.	PROCEEDINGS
7/1/16	R. THORBOURNE	0344	40	PROB HRG J&S
				All parties docs. - Δ docs. o/c.
				Probation Report ordered Filed F/W
				PAW; JTS as follows:
				Ct. 1 - PC 597(a) = 5 yrs. FP
				364 DAYS CJ
				92 actual cts. \ Total cts. = 184
				+ 92 atwt cts. > Days.
				Court has no objection to
				SWP/HD
				stay SWP/HD sign up to 8/12/16.
				Quality surrender 9/16/16
				11:00pm RCCC.
				Δ to abide by all terms/cond. of
				prob. report pgs. 11-16 as modified.
				Δ advised / provided w/ Firearms
				prohibition Notification packet.
				Δ to report to prob. Dept. @ EST.
				or Florin-Perkins by 7/16/16.
				Cost \$40; CFF \$30
				Δ remains released from custody.
				Bal. chgs. Dismiss. I.T.

(prob.)

DO NOT FILE ANY DOCUMENTS ON TOP OF THIS FORM

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

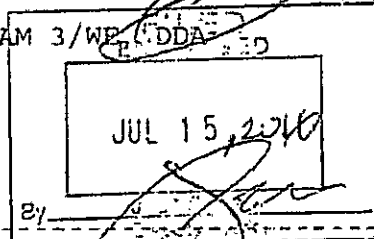
CORRECTION 07/12/2016

DATE & TIME: 07/01/2016 1:30 PM
JUDGE : RAOUL THORBOURNE
REPORTER : K. CARDOZO

DEPT : 40
CLERK : J. LAYUGAN
BAILIFF:

PEOPLE OF THE STATE OF CALIFORNIA
VS
BENJAMIN JUSTIN BROWNLEE, DEFENDANT

) COUNSEL:
) AARSETH S TEAM 3/WP (DDA-35
)
)
)
) Ryan, C. PD



XREF: 5050704 DOB: [REDACTED] CASE NO. 16FE004445

MINUTE ORDER & ORDER OF PROBATION

Defendant and counsel above named were present. Defendant was convicted as follows:

05/31/2016 CT 1

PC 597(A) FEL Nolo contendere
TWO STRIKES ALLEGATIONS
W/1 PRIOR
PC 667.5(B)
PC 1192.7(C)
PC 667(B) - (I)
PC 1170(H) (3)

The court having read and considered the presentence probation report, ordered it filed.

it is ordered that imposition of judgment and sentence be suspended and the defendant placed on formal probation for a period of 5 years from the date of this order on the following general and specific terms and conditions:

The defendant shall serve 364 days in the Sacramento County Jail. The Court recommends Sheriff's Work Project. Defendant to qualify or surrender at the Rio Cosumnes Correctional Center. While in confinement, the defendant will comply with all rules and regulations of the County Jail and conduct himself in a proper manner.

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PAGE:
DATE: 07/01/2016
CASE NO.: 16FE004445
CASE TITLE: BROWNLEE
DISTRIB:

PAGE 1

JICR0220/CR30 (12/1991)

Said term shall be served consecutive to all other terms.

Said term is stayed until 09/16/2016, 6:00 PM at which time defendant shall report to surrender at the Rio Cosumnes Correctional Center.

Defendant shall receive credit for time served of 184 days.

Defendant shall submit his person, property and automobile and any object under defendant's control to search and seizure in or out of the presence of the defendant, by any law enforcement officer and/or Probation officer, at any time of the day or night, with or without his consent, with or without a warrant. Defendant being advised of his constitutional rights in this regard, and having accepted probation, is deemed to have waived same.

The defendant shall seek and obtain professional counseling through and under the direction of the Probation Officer.

Defendant not associate with persons he or she knows to be illegal users or sellers of marijuana, dangerous drugs or narcotics, nor be in places where he or she knows illegal narcotics and/or dangerous drugs are present.

Defendant not knowingly own or possess any dangerous or deadly weapon.

The defendant not knowingly own, purchase, receive or have in his possession or under his/her custody or control, any firearm, ammunition or reloading ammunition. Condition as mandated in 29800(a)(1) and 30305(a) PC. Defendant advised and provided with firearms prohibition packet.

Criminal impact fee (PC 1465.7) 20% surcharge on base fines

~~Defendant shall pay a \$300.00, restitution-fine pursuant to Penal Code Section 1202.4(b)~~

Pursuant to Penal Code Section 1202.44, the Court is imposing an additional restitution fine in the same amount just imposed under Penal Code Section 1202.4(b). Payment of this fine is stayed and shall become effective upon revocation of Probation.

Defendant shall pay all fines, fees, assessments and restitution through the court's installment process, which may include the Department of Revenue Recovery.

Defendant pay a court security surcharge fee, per conviction, pursuant to

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PAGE 2

JICR0220/CR30 (12/1991)

Penal Code Section 1465.8(a)(1) in the amount of \$40.00
(\$40.00 X 1 conviction), payable through the Court's installment process.
This is a court ordered fee not a condition of probation.

Defendant shall report to the Department of Revenue Recovery for a financial evaluation and recommendation of ability to pay costs for and in the amount of \$702.00 for the presentence report and \$46.00 per month for probation supervision, payable through the Court's installments process. This is a court ordered fee not a condition of probation.

Pay \$25.00 urinalysis testing fee through DRR.

Defendant pay a mandatory Court facility fee in the amount of \$30.00 pursuant to section 70373 of the Government Code, payable through the Court's installment process.

Defendant shall submit his/her person, property and automobile and any object under defendant's control to search and seizure in or out of the presence of the defendant, by any law enforcement officer and/or probation officer, at any time of the day or night, with or without his consent, with or without a warrant. Defendant being advised of his/her constitutional rights in this regard, and having accepted probation, is deemed to have waived same.

Defendant shall report to the Probation Office within 48 hours of release.

Defendant have no contact whatsoever with animals, or to have any pets, without the prior approval of the probation officer.

Peaceful contact with Elisha Sullivan.

Defendant participate in an evidence based treatment intervention program addressing criminal thinking through and under the direction of the probation officer.

It is the further Order of the Court that you shall, during your term of probation, comply in all respects with the following General Conditions of probation as authorized by the provisions of the Probation Statutes of the State of California. Further, that you shall comply in all respects with any Special Conditions of Probation contained in your Order of Probation or which may subsequently be ordered by the Court or the Probation Officer.

1. Obey all laws applicable to you.

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CASE TITLE: BROWNLEE
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PAGE 3

JICR0220/CR30 (12/1991)

2. Seek and/or maintain regular and steady employment or be enrolled in an educational or vocational program approved by the probation officer having your supervision; not voluntarily change employment without having gained approval for such change; and if your employment is terminated, either temporarily or permanently, for any cause whatsoever, you are to notify your probation officer within 48 hours.
3. You may not leave the State of California at any time without first securing permission from your probation officer and completing the appropriate procedures to do so. You are not to remain away from your regular residence for more than 48 hours without first having secured permission from your probation officer. You are to immediately notify your probation officer of any intended change of address and the reasons therefore.
4. You are to follow in all respects any reasonable instructions given to you by the Probation Officer having your supervision.
5. You are to report in person to the Division of Adult Probation at such times and dates as the Probation Officer having your supervision may direct. (If for any reason beyond your control you are unable to report on your assigned date and time, you shall communicate this fact to the Division of Adult Probation on or before the assigned date.)
6. You shall allow Probation Officers to visit your home and place of employment at reasonable times.
7. Inform Probation Officer of dogs and other pets with potential to cause harm in the residence. Notify of changes within 24 hours.

Failure by you to comply with any of the foregoing Specific and General Conditions of Probation could result in: (1) the grant of probation being revoked, resulting in confinement in the County Jail for additional periods or imposition of any sentence which the Court could have imposed on you before you were placed on probation; (2) the term of probation being extended up to the maximum provided by law; or (3) the conditions of probation being amended, resulting in a change or addition to the condition within the limits of the Probation Statutes.

Do not knowingly use, handle or possess controlled substances of any kind unless lawfully prescribed to you by a licensed medical practitioner.

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 PAGE:
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PAGE 4

JICR0220/CR30 (12/1991)

Defendant is released on probation.

Done in open Court 07/01/2016

The foregoing terms and Conditions of Probation have been explained to me and I fully understand them and agree in every particular to abide by them.

Date: _____ Probationer _____

Witnessed:

By: _____
Officer

Sec. 1203.4 Penal Code: PROBATIONER MAY WITHDRAW PLEA OF GUILTY.

At any time after the termination of the period of probation, upon completion of the requirements of Penal Code section 1203.4, you may petition the court to exercise its discretion to allow you to withdraw your plea of guilty or nolo contendere or to set aside a verdict of guilty and dismiss the accusations against you. If such relief is granted by the court, you may also petition the court for a certificate of rehabilitation and pardon upon completion of the requirements of Penal Code section 4852.01.

Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess or have in his custody or control any firearm capable of being concealed upon the person or prevent his conviction under Section 12021.

prosecution of such defendant for any other offense, such prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed.

NOTICE: Both California Penal Code Section 12021 and the Federal Gun Law of 1968 prohibit the use or possession of any firearm, including any handgun, rifle or shotgun, by any individual convicted of a felony.

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JICR0220/CR30 (12/1991)

JICR0200 - END OF REPORT



Superior Court of California County of Sacramento

720 Ninth Street
Sacramento CA 95814


This letter is confirmation that the annexed instrument (inclusive) is a correct copy of the original on file in the Sacramento Superior Court file.

Sacramento Superior Court in and for the County of Sacramento, State of California.

CASE NAME BENJAMIN BROWNLEE

CASE NUMBER 16FE018278

ATTEST CERTIFIED DATE 08-31-2021

BY *L. Watkins*  DEPUTY CLERK

TOTAL NUMBER OF PAGES 4

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TELEPHONE (916) 874-5664

CR-282 (revised 01/01/06)

ABSTRACT OF JUDGMENT - PRISON COMMITMENT - INDETERMINATE

[NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-292 ATTACHED]

<input checked="" type="checkbox"/> SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO <input type="checkbox"/> MUNICIPAL BRANCH OR JUDICIAL DISTRICT		PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: BENJAMIN JUSTIN BROWNLEE XREF - 5050704 AKA: CII#: A35836270 BOOKING #:		DOB: [REDACTED] POB: New York	16FE018278 -A -B -By E. Gonzalez, Deputy Clerk -D	<div style="border: 2px solid black; padding: 5px; text-align: center;"> FILED/ENDORSED SEP - 1 2017 </div>
COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT		<input type="checkbox"/> NOT PRESENT <input type="checkbox"/> AMENDED ABSTRACT				
DATE OF HEARING 09/01/2017		DEPT. NO. 14		JUDGE DONALD J. CURRIER		
CLERK E. GONZALEZ		REPORTER V. CLAYTON, CSR #13112		PROBATION NO. OR PROBATION OFFICER A-504,760		
COUNSEL FOR PEOPLE ROBIN SHAKELY, D.D.A.				COUNSEL FOR DEFENDANT ALAN WHISENAND, C.A.C.		

1. Defendant was convicted of the commission of the following felonies:

- ☐ Additional counts are listed on attachment
 (number of pages attached)

CNT	CODE	SECTION NO	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO/DATE/YEAR)	CONVICTED BY			CONCURRENT	CONSECUTIVE	ON STRY
						JURY	COURT	PIA			
1	PC	187(a), 1st Deg.	Murder 1st Deg. w/Special Circumstance #3 found true pursuant to Penal Code section 190.2(a)(17)(A)	2016	08/01/2017	X				X	

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

CNT	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTION OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL

Defendant was sentenced to State Prison for an INDETERMINATE TERM:

4. ☒ For LIFE WITHOUT THE POSSIBILITY OF PAROLE on Count One.
 5. ☐ For LIFE WITH POSSIBILITY OF PAROLE on counts
 6. ☐ For _____ years to life, WITH POSSIBILITY OF PAROLE on counts PLUS enhancement time shown above.
 7. ☒ Additional determinate term (see CR-290).
 8. Defendant was sentenced pursuant to ☐ PC 667(b)-(i) or PC 1170.12 ☐ PC 667.61 ☐ PC 667.7 ☐ PC 667.9
☐ other (specify):

This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for indeterminate sentences. Attachments may be used but must be referred to in this document.

(Continued on reverse)

Form Adopted by the
 Judicial Council of California
 CR-292 (Rev. January 1, 1999)

ABSTRACT OF JUDGMENT - PRISON COMMITMENT - INDETERMINATE
 [NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-292 ATTACHED]

Penal Code
 §§ 1213, 1213.5

00007

16FE018278

-A

-B

-C

-D

9. FINANCIAL OBLIGATIONS (including any applicable penalty assessments):

- a. RESTITUTION FINE of: \$ 10,000.00 per PC 1202.4(b) forthwith per PC 2085.5.
 b. RESTITUTION FINE of: \$ _____ per PC 1202.45 suspended unless parole is revoked.
 c. RESTITUTION of: \$ TBD per PC 1202.4(f) to ☒ California Victim Compensation Board
 (*List victim name(s) if known and amount breakdown in item 11, below.)
 (1) ☒ Amount to be determined.
 (2) ☐ Interest rate of: _____% (not to exceed 10% per PC 1204.4(f)(3)(F)).
 d. ☐ LAB FEE of: \$ _____ for counts: _____ per H&SC 11372.5(a).
 e. ☐ DRUG PROGRAM FEE of \$150 per H&SC 11372.7(a).
 f. ☐ FINE of \$ _____ per PC 1202.5.

10. TESTING

- a. ☐ AIDS pursuant to ☐ PC 1202.1 ☐ other (specify):
 b. ☒ DNA pursuant to PC 295.1(a)(1)(A) ☐ other (specify):
☐ DNA Collected
☐ DNA Sample Collection Verified

11. Other orders (specify):

Defendant to pay through Court's installment process:

\$80 (@\$40 per count) court operations assmnt. pursuant PC 1465.8(a)(1); \$60 (@\$30 per count) Court Facility Fee purs. GC 70373,
 \$402.38 Main Jail Booking Fee & \$99.19 Main Jail Classification Fee purs. GC 29550.2(a).

Deft. advised and provided with Firearms Prohibition Packet in open court.

Deft. advised of Appeal Rights.

12. Execution of sentence imposed

- a. ☒ at initial sentencing hearing.
 b. ☐ at resentencing per decision on appeal.
 c. ☐ after revocation of probation.
 d. ☐ at resentencing per recall of commitment. (PC 1170(d).)
 e. ☐ other (specify):

13. CREDIT FOR TIME SERVED

CASE NUMBER	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT
16FE018278 -A	258	258	-0- <input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
-B			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
-C			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
-D			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
DATE SENTENCE PRONOUNCED: 09/01/2017	SERVED TIME IN STATE INSTITUTION: <input type="checkbox"/> DMH <input type="checkbox"/> CDC <input type="checkbox"/> CRC		

14. The defendant is remanded to the custody of the sheriff ☒ forthwith ☐ after 48 hours excluding Saturdays, Sundays, and holidays.

To be delivered to ☐ the reception center designated by the director of the California Department of Corrections.
☒ other (specify): DVI

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE

E. GONZALEZ

DATE

09/01/2017



FELONY ABSTRACT OF JUDGMENT - DETERMINATE
(NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-290 ATTACHED)

CR-290

SUPERIOR COURT OF CALIFORNIA, COUNTY OF: SACRAMENTO		FILED/ENDORSED	
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: BENJAMIN JUSTIN BROWNLEE XREF - 5050704		DOB: [REDACTED] POB: New York	16FE018278
AKA: CII NO: BOOKING NO. <input type="checkbox"/> NOT PRESENT		<div style="border: 1px solid black; padding: 5px; text-align: center;"> SEP - 1 2017 E. Gonzalez, Deputy Clerk </div>	
FELONY ABSTRACT OF JUDGMENT <input checked="" type="checkbox"/> PRISON COMMITMENT <input type="checkbox"/> COUNTY JAIL COMMITMENT			
DATE OF HEARING 09/01/2017	DEPT. NO. 14	JUDGE DONALD J. CURRIER	
CLERK E. GONZALEZ	REPORTER V. CLAYTON, C.S.R. #13112	PROBATION NO. OR PROBATION OFFICER <input type="checkbox"/> IMMEDIATE SENTENCING A-504,760	
COUNSEL FOR PEOPLE ROBIN SHAKELY, D.D.A.		COUNSEL FOR DEFENDANT ALAN WHISENAND, C.A.C. <input checked="" type="checkbox"/> APPTD.	

1. Defendant was convicted of the commission of the following felonies:

- ☐ Additional counts are listed on attachment
 ____ (number of pages attached)

COUNT	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY			TERMINAL (L, M, U)	CONCURRENT	1/2 CONSECUTIVE	CONSECUTIVE FULL TERM	INCOMPLETE SENTENCE (refer to item 5)	C.A.S.T.V.	SERIOUS FELONY	VIOLENT FELONY	PRINCIPAL OR CONSECUTIVE TIME IMPOSED	
						JURY	COURT	PLEA									YRS.	MON.
4	PC	211, 2nd Deg.	Robbery in the second degree	2016	08/01/2017	X			M			X		X	X		(3)	(0)

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed, "S" for stayed, or "PS" for punishment struck. DO NOT LIST ENHANCEMENTS FULLY STRICKEN by the court.

COUNT	ENHANCEMENT	TIME IMPOSED "S" or "PS"	ENHANCEMENT	TIME IMPOSED "S" or "PS"	ENHANCEMENT	TIME IMPOSED "S" or "PS"	TOTAL

3. ENHANCEMENTS charged and found to be true for PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed, "S" for stayed, or "PS" for punishment struck. DO NOT LIST ENHANCEMENTS FULLY STRICKEN by the court.

ENHANCEMENT	TIME IMPOSED "S" or "PS"	ENHANCEMENT	TIME IMPOSED "S" or "PS"	ENHANCEMENT	TIME IMPOSED "S" or "PS"	TOTAL

4. ☐ Deft. sentenced per: ☐ to county jail per 1170(h)(1) or (2)
☐ To prison per 1170(a), 1170.1(a) or 1170(h)(3) due to ☐ current or prior serious or violent felony ☐ PC 290 or ☐ PC 186.11 enhancement
☐ per PC 667(b)-(i) or PC 1170.12 (strike prior)
☐ per PC 1170(a)(3). Pre confinement credits equal or exceed time imposed. ☐ Defendant ordered to report to local parole or probation office.

5. INCOMPLETED SENTENCE(S) CONSECUTIVE

COUNTY	CASE NUMBER

6. TOTAL TIME ON ATTACHED PAGES:

7. ☒ Additional indeterminate term (see CR-292).

8. TOTAL TIME: (3) (0)

Attachments may be used but must be referred to in this document.

Page 1 of 2

PEOPLE OF THE STATE OF CALIFORNIA v.
 BENJAMIN JUSTIN BROWNLEE

16FE018278

-A

-B

-C

-D

2. FINANCIAL OBLIGATIONS (plus any applicable penalty assessments):

a. Restitution Fines:

Case A: \$ _____ per PC 1202.4(b) forthwith per PC 2085.5; \$ _____ per PC 1202.45 suspended unless parole is revoked.
 \$ _____ per PC 1202.44 is now due, probation having been revoked.

Case B: \$ _____ per PC 1202.4(b) forthwith per PC 2085.5; \$ _____ per PC 1202.45 suspended unless parole is revoked.
 \$ _____ per PC 1202.44 is now due, probation having been revoked.

Case C: \$ _____ per PC 1202.4(b) forthwith per PC 2085.5; \$ _____ per PC 1202.45 suspended unless parole is revoked.
 \$ _____ per PC 1202.44 is now due, probation having been revoked.

Case D: \$ _____ per PC 1202.4(b) forthwith per PC 2085.5; \$ _____ per PC 1202.45 suspended unless parole is revoked.
 \$ _____ per PC 1202.44 is now due, probation having been revoked.

Restitution:

Case A: \$ _____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund
 Case B: \$ _____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund
 Case C: \$ _____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund
 Case D: \$ _____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund

☐ * Victim name(s), if known, and amount breakdown in item 13, below. ☐ * Victim names(s) in probation officer's report.

b. Fines:

Case A: \$ _____ per PC 1202.5. \$ _____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ Includes: ☐ Lab Fee per HS 11372.5(a) ☐ \$ _____ Drug Program Fee per HS 11372.7(a) for each qualifying offense.

Case B: \$ _____ per PC 1202.5. \$ _____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ Includes: ☐ Lab Fee per HS 11372.5(a) ☐ \$ _____ Drug Program Fee per HS 11372.7(a) for each qualifying offense.

Case C: \$ _____ per PC 1202.5. \$ _____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ Includes: ☐ Lab Fee per HS 11372.5(a) ☐ \$ _____ Drug Program Fee per HS 11372.7(a) for each qualifying offense.

Case D: \$ _____ per PC 1202.5. \$ _____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ Includes: ☐ Lab Fee per HS 11372.5(a) ☐ \$ _____ Drug Program Fee per HS 11372.7(a) for each qualifying offense.

d. Court Operations Assessment: \$40.00 per PC 1465.8. e. Conviction Assessment: \$30.00 per GC 70373. f. Other: \$ per (specify):

10. TESTING: ☐ Compliance with PC 296 verified ☐ AIDS per PC 1202.1 ☐ other (specify): Sac. Sheriff to collect purs to 296 PC11. REGISTRATION REQUIREMENT: ☐ per (specify code section):12. ☐ MANDATORY SUPERVISION: Execution of a portion of the defendant's sentence is suspended and deemed a period of mandatory supervision under Penal Code section 1170(h)(5)(B) as follows (specify total sentence, portion suspended, and amount to be served forthwith):

Total: _____ Suspended: _____ Served forthwith: _____

Other orders (specify):

All fines, fees, time credits, testing order, advisements and other orders are listed in the INDETERMINATE ABSTRACT, CR-292.

14. IMMEDIATE SENTENCING: ☐ Probation to prepare and submit a post-sentence report to CDCR per PC 1203c.
Defendant's race/national origin:

15. EXECUTION OF SENTENCE IMPOSED:

- a. ☒ at initial sentencing hearing.
 b. ☐ at resentencing per decision on appeal.
 c. ☐ after revocation of probation.
 d. ☐ at resentencing per recall of commitment. (PC1170(d).)
 e. ☐ other (specify):

16. CREDIT FOR TIME SERVED

CASE	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT
A	See CR-292		<input type="checkbox"/> 2933 <input type="checkbox"/> 2933.1 <input checked="" type="checkbox"/> 4019
B			<input type="checkbox"/> 2933 <input type="checkbox"/> 2933.1 <input type="checkbox"/> 4019
C			<input type="checkbox"/> 2933 <input type="checkbox"/> 2933.1 <input type="checkbox"/> 4019
D			<input type="checkbox"/> 2933 <input type="checkbox"/> 2933.1 <input type="checkbox"/> 4019
Date Sentence Pronounced:		Time Served in State Institution:	
09/01/2017		DMH	CDC CRC

15. The defendant is remanded to the custody of the sheriff ☒ forthwith ☐ after 48 hours excluding Saturdays, Sundays, and holidays.To be delivered to ☐ the reception center designated by the director of the California Department of Corrections and Rehabilitation.☐ county jail ☒ other (specify): DVI

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

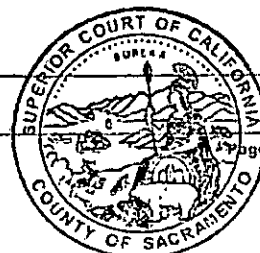
DEPUTY'S SIGNATURE

E. GONZALEZ

09/01/2017

CR-290 (Rev. July 1, 2012)

FELONY ABSTRACT OF JUDGMENT - DETERMINATE



Page 2 of 2

: 00010



Corrections and Community Supervision

KATHY HOCHUL
Governor

ANTHONY J. ANNUCCI
Acting Commissioner

CERTIFICATION

I, Marat Shkolnik, being employed by the New York State Department of Corrections and Community Supervision (DOCCS) in the position of Assistant Counsel, have reviewed the attached documents and hereby state and certify pursuant to New York CPLR 2307, 4518(c) and 4540, and FRE Rule 902, that they are the complete, true, and exact copy of Legal Date Computation and Chronological History Display for formerly incarcerated individual Benjamin Brownlee with a Date of Birth of 12/14/1989 (DIN 10A1145):

The attached records are maintained in the regular course of business of DOCCS and, with regard to the attached records that were created by employees of DOCCS, I certify that those records were made in the regular course of business of DOCCS; that it was in the regular course of business of DOCCS to make them at the time of the condition, act, transaction, occurrence, or event documented in such records, or within a reasonable time thereafter; and that the employees who created the records had a duty to truthfully record such condition, act, transaction, occurrence or event.

However, as to records which were not created specifically by employees of DOCCS, and which were received from other agencies, departments, businesses, or individuals, I certify only that the record is a true and accurate copy of the record contained or maintained on file for formerly incarcerated individual Benjamin Brownlee with a Date of Birth of 12/14/1989 (DIN 10A1145).

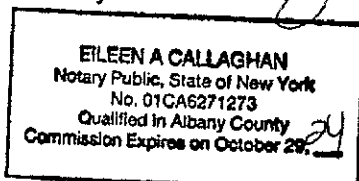
Witness my hand and seal on this 23 day of September, 2021.

Name: Marat Shkolnik

Title: Assistant Counsel

Sworn before me this

23 day of Sept., 2021.

Notary Public

16:06:08 Thursday, September 23, 2021

09/23/21 CCNSMXS RECEPTION/CLASSIFICATION SYSTEM KRCLMHI
16:04:09 C999W410 INQUIRY INDEX
DIN: 10A1145 NAME: BROWNLEE, BENJAMIN NYSID: 09059294J
DATE COMP RECORDS: 1 - 11 of 11 DATE RECEIVED: 03/12/2010
A COMPUTATION TYPE DATE TIME USER
_ U01 UPDATE PE, TRD, GRAD DATES AND PH DATE/TYPE 05/22/2014 09:00A C370NSC
_ 92 UPDATE OF P.E., P.H. AND/OR T.A.C. INFO 05/25/2012 01:33P C000KLL
_ 91 LOST GOOD TIME ADJUSTMENT 05/09/2011 C010SLQ
_ 92 UPDATE OF P.E., P.H. AND/OR T.A.C. INFO 02/14/2011 C010SLQ
_ 92 UPDATE OF P.E., P.H. AND/OR T.A.C. INFO 02/14/2011 C010SLQ
_ 92 UPDATE OF P.E., P.H. AND/OR T.A.C. INFO 05/17/2010 C240EMD
_ 92 UPDATE OF P.E., P.H. AND/OR T.A.C. INFO 03/15/2010 C240KDH
_ 92 UPDATE OF P.E., P.H. AND/OR T.A.C. INFO 03/15/2010 C240KDH
_ 01 BASIC INDETERMINATE 03/12/2010 C240KDH
_ 01 BASIC INDETERMINATE 03/12/2010 C240KDH
_ 01 BASIC INDETERMINATE 03/12/2010 C240KDH

ACTION: X SELECT P PRINT

*** END OF HISTORY DATA FOR THIS DIN ***

<ENTER> (CONTINUE) <PF3> EXIT <PF6> COMMENTS <PF7> BKWD <PF8> FWD
<CLEAR> EXIT(SYSTEM) <PF9> PRINT ALL

DIN 10A1145 BROWNLEE, BENJAMIN DATE COMPUTATION/ENTRY KRCLM40
LAST COMP. 01BASIC INDETERMINATE DONE 03/12/2010 BY C240KDH
DATE RECEIVED 2006 04 24 TIME TO SERVE (MINIMUM) 002 03 16
MINIMUM TERM 003 00 00 TIME TO SERVE (MAXIMUM) 008 03 16
MAXIMUM TERM 009 00 00 TIME OWED (MINIMUM)
JAIL TIME (DAYS) 0254 TIME OWED (MAXIMUM)
DATE SENTENCED PAROLE JAIL TIME (DAYS)
ORIG. MAX. EXP. DATE NET TIME OWED
DATE DECLARED DELINQUENT LIMITED CREDIT TIME POSSIBLE 00 06 00
DATE RETURNED SUPPLEMENTAL MERIT TIME POSS.
ORIG. DATE RECEIVED MERIT TIME POSSIBLE
DATE RELEASED GOOD TIME ADJUSTMENT
DATE FAILED TO RETURN GOOD TIME POSSIBLE 003 00 00
DATE ESCAPED LIMITED CREDIT TIME DATE 2011 02 09
ORIG. PAR. ELIG. DATE SUPPLEMENTAL MERIT ELIG DT
OTHER STATE SENT. DATE MERIT ELIGIBILITY DATE
DATE DISCHARGED PAROLE ELIGIBILITY DATE 2008 08 09
DATE REAFFIRMED PAROLE HEARING DATE/TYPE 2010 04 PIE
PRIOR TIME CREDIT TENTATIVE RELEASE DATE
MEPS MAXIMUM EXPIRATION DATE 2014 08 09
PAROLE BOARD DISCHARGE CONDITIONAL RELEASE DATE 2011 08 09
PRS PRS ME T.A.C. DATE/TYPE 2011 04 INIT.
REMARKS
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DIN 10A1145 BROWNLEE, BENJAMIN		DATE COMPUTATION/ENTRY	KRCLM40
LAST COMP. 01BASIC INDETERMINATE		DONE 03/12/2010 BY C240KDH	
DATE RECEIVED	2006 04 24	TIME TO SERVE (MINIMUM)	002 03 16
MINIMUM TERM	003 00 00	TIME TO SERVE (MAXIMUM)	008 03 16
MAXIMUM TERM	009 00 00	TIME OWED (MINIMUM)	
JAIL TIME (DAYS)	0254	TIME OWED (MAXIMUM)	
DATE SENTENCED		PAROLE JAIL TIME (DAYS)	
ORIG. MAX. EXP. DATE		NET TIME OWED	
DATE DECLARED DELINQUENT		LIMITED CREDIT TIME POSSIBLE	00 06 00
DATE RETURNED		SUPPLEMENTAL MERIT TIME POSS.	
ORIG. DATE RECEIVED		MERIT TIME POSSIBLE	
DATE RELEASED		GOOD TIME ADJUSTMENT	
DATE FAILED TO RETURN		GOOD TIME POSSIBLE	003 00 00
DATE ESCAPED		LIMITED CREDIT TIME DATE	2011 02 09
ORIG. PAR. ELIG. DATE		SUPPLEMENTAL MERIT ELIG DT	
OTHER STATE SENT. DATE		MERIT ELIGIBILITY DATE	
DATE DISCHARGED		PAROLE ELIGIBILITY DATE	2008 08 09
DATE REAFFIRMED		PAROLE HEARING DATE/TYPE	2010 04 PIE
PRIOR TIME CREDIT		TENTATIVE RELEASE DATE	
MEPS		MAXIMUM EXPIRATION DATE	2014 08 09
PAROLE BOARD DISCHARGE		CONDITIONAL RELEASE DATE	2011 08 09
PRS PRS ME		T.A.C. DATE/TYPE	2011 04 INIT
REMARKS 550 DAYS LGT @OCFS			
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DIN 10A1145 BROWNLEE, BENJAMIN		DATE COMPUTATION/ENTRY	KRCLM40
LAST COMP. 01BASIC INDETERMINATE		DONE 03/12/2010 BY C240KDH	
DATE RECEIVED	2006 04 24	TIME TO SERVE (MINIMUM)	002 03 16
MINIMUM TERM	003 00 00	TIME TO SERVE (MAXIMUM)	008 03 16
MAXIMUM TERM	009 00 00	TIME OWED (MINIMUM)	
JAIL TIME (DAYS)	0254	TIME OWED (MAXIMUM)	
DATE SENTENCED		PAROLE JAIL TIME (DAYS)	
ORIG. MAX. EXP. DATE		NET TIME OWED	
DATE DECLARED DELINQUENT		LIMITED CREDIT TIME POSSIBLE	00 06 00
DATE RETURNED		SUPPLEMENTAL MERIT TIME POSS.	
ORIG. DATE RECEIVED		MERIT TIME POSSIBLE	
DATE RELEASED		GOOD TIME ADJUSTMENT	
DATE FAILED TO RETURN		GOOD TIME POSSIBLE	003 00 00
DATE ESCAPED		LIMITED CREDIT TIME DATE	2011 02 09
ORIG. PAR. ELIG. DATE		SUPPLEMENTAL MERIT ELIG DT	
OTHER STATE SENT. DATE		MERIT ELIGIBILITY DATE	
DATE DISCHARGED		PAROLE ELIGIBILITY DATE	2008 08 09
DATE REAFFIRMED		PAROLE HEARING DATE/TYPE	2010 04 PIE
PRIOR TIME CREDIT		TENTATIVE RELEASE DATE	
MEPS		MAXIMUM EXPIRATION DATE	2014 08 09
PAROLE BOARD DISCHARGE		CONDITIONAL RELEASE DATE	2011 08 09
PRS PRS ME		T.A.C. DATE/TYPE	2011 04 INIT
REMARKS 550 DAYS LGT @OCFS			
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DIN 10A1145 BROWNLEE, BENJAMIN DATE COMPUTATION/ENTRY KRCLM40
 LAST COMP. 92UPDATE OF PE, PH, TAC INFO DONE 03/15/2010 BY C240KDH
 DATE RECEIVED 2006 04 24 TIME TO SERVE (MINIMUM) 002 03 16
 MINIMUM TERM 003 00 00 TIME TO SERVE (MAXIMUM) 008 03 16
 MAXIMUM TERM 009 00 00 TIME OWED (MINIMUM)
 JAIL TIME (DAYS) 0254 TIME OWED (MAXIMUM)
 DATE SENTENCED PAROLE JAIL TIME (DAYS)
 ORIG. MAX. EXP. DATE NET TIME OWED
 DATE DECLARED DELINQUENT LIMITED CREDIT TIME POSSIBLE 00 06 00
 DATE RETURNED SUPPLEMENTAL MERIT TIME POSS.
 ORIG. DATE RECEIVED MERIT TIME POSSIBLE
 DATE RELEASED GOOD TIME ADJUSTMENT
 DATE FAILED TO RETURN GOOD TIME POSSIBLE 003 00 00
 DATE ESCAPED LIMITED CREDIT TIME DATE 2011 02 09
 ORIG. PAR. ELIG. DATE SUPPLEMENTAL MERIT ELIG DT
 OTHER STATE SENT. DATE MERIT ELIGIBILITY DATE
 DATE DISCHARGED PAROLE ELIGIBILITY DATE 2008 08 09
 DATE REAFFIRMED PAROLE HEARING DATE/TYPE 2010 05 REAP
 PRIOR TIME CREDIT TENTATIVE RELEASE DATE
 MEPS MAXIMUM EXPIRATION DATE 2014 08 09
 PAROLE BOARD DISCHARGE CONDITIONAL RELEASE DATE 2011 08 09
 PRS PRS ME T.A.C. DATE/TYPE 2011 04 INIT
 REMARKS 550 DAYS LGT @OCFS
 <PF3>EXIT <PF4>RETURN <PF6>COMMENTS <PF10>PRINT <CLEAR>EXIT

DIN 10A1145 BROWNLEE, BENJAMIN DATE COMPUTATION/ENTRY KRCLM40
 LAST COMP. 92UPDATE OF PE, PH, TAC INFO DONE 03/15/2010 BY C240KDH
 DATE RECEIVED 2006 04 24 TIME TO SERVE (MINIMUM) 002 03 16
 MINIMUM TERM 003 00 00 TIME TO SERVE (MAXIMUM) 008 03 16
 MAXIMUM TERM 009 00 00 TIME OWED (MINIMUM)
 JAIL TIME (DAYS) 0254 TIME OWED (MAXIMUM)
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 DATE RETURNED SUPPLEMENTAL MERIT TIME POSS.
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 PAROLE BOARD DISCHARGE CONDITIONAL RELEASE DATE 2011 08 09
 PRS PRS ME T.A.C. DATE/TYPE 2011 04 INIT
 REMARKS 550 DAYS LGT @OCFS
 <PF3>EXIT <PF4>RETURN <PF6>COMMENTS <PF10>PRINT <CLEAR>EXIT

16:06:08 Thursday, September 23, 2021

DIN 10A1145 BROWNLEE, BENJAMIN DATE COMPUTATION/ENTRY KRCLM40
LAST COMP. 92UPDATE OF PE, PH, TAC INFO DONE 05/17/2010 BY C240EMD
DATE RECEIVED 2006 04 24 TIME TO SERVE (MINIMUM) 002 03 16
MINIMUM TERM 003 00 00 TIME TO SERVE (MAXIMUM) 008 03 16
MAXIMUM TERM 009 00 00 TIME OWED (MINIMUM)
JAIL TIME (DAYS) 0254 TIME OWED (MAXIMUM)
DATE SENTENCED PAROLE JAIL TIME (DAYS)
ORIG. MAX. EXP. DATE NET TIME OWED
DATE DECLARED DELINQUENT LIMITED CREDIT TIME POSSIBLE 00 06 00
DATE RETURNED SUPPLEMENTAL MERIT TIME POSS.
ORIG. DATE RECEIVED MERIT TIME POSSIBLE
DATE RELEASED GOOD TIME ADJUSTMENT
DATE FAILED TO RETURN GOOD TIME POSSIBLE 003 00 00
DATE ESCAPED LIMITED CREDIT TIME DATE 2011 02 09
ORIG. PAR. ELIG. DATE SUPPLEMENTAL MERIT ELIG DT
OTHER STATE SENT. DATE MERIT ELIGIBILITY DATE
DATE DISCHARGED PAROLE ELIGIBILITY DATE 2008 08 09
DATE REAFFIRMED PAROLE HEARING DATE/TYPE 2012 05 REAP
PRIOR TIME CREDIT TENTATIVE RELEASE DATE
MEPS MAXIMUM EXPIRATION DATE 2014 08 09
PAROLE BOARD DISCHARGE CONDITIONAL RELEASE DATE 2011 08 09
PRS PRS ME T.A.C. DATE/TYPE 2011 04 INIT
REMARKS 550 DAYS LGT @OCFS
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DIN 10A1145 BROWNLEE, BENJAMIN DATE COMPUTATION/ENTRY KRCLM40
LAST COMP. 92UPDATE OF PE, PH, TAC INFO DONE 02/14/2011 BY C010SLQ
DATE RECEIVED 2006 04 24 TIME TO SERVE (MINIMUM) 002 03 16
MINIMUM TERM 003 00 00 TIME TO SERVE (MAXIMUM) 008 03 16
MAXIMUM TERM 009 00 00 TIME OWED (MINIMUM)
JAIL TIME (DAYS) 0254 TIME OWED (MAXIMUM)
DATE SENTENCED PAROLE JAIL TIME (DAYS)
ORIG. MAX. EXP. DATE NET TIME OWED
DATE DECLARED DELINQUENT LIMITED CREDIT TIME POSSIBLE 00 06 00
DATE RETURNED SUPPLEMENTAL MERIT TIME POSS.
ORIG. DATE RECEIVED MERIT TIME POSSIBLE
DATE RELEASED GOOD TIME ADJUSTMENT
DATE FAILED TO RETURN GOOD TIME POSSIBLE 003 00 00
DATE ESCAPED LIMITED CREDIT TIME DATE 2011 02 09
ORIG. PAR. ELIG. DATE SUPPLEMENTAL MERIT ELIG DT
OTHER STATE SENT. DATE MERIT ELIGIBILITY DATE
DATE DISCHARGED PAROLE ELIGIBILITY DATE 2008 08 09
DATE REAFFIRMED PAROLE HEARING DATE/TYPE 2012 05 REAP
PRIOR TIME CREDIT TENTATIVE RELEASE DATE
MEPS MAXIMUM EXPIRATION DATE 2014 08 09
PAROLE BOARD DISCHARGE CONDITIONAL RELEASE DATE 2011 08 09
PRS PRS ME T.A.C. DATE/TYPE 2011 03 INIT
REMARKS 550 DAYS LGT @OCFS
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16:06:08 Thursday, September 23, 2021

DIN 10A1145 BROWNLEE, BENJAMIN DATE COMPUTATION/ENTRY KRCLM40
LAST COMP. 92UPDATE OF PE, PH, TAC INFO DONE 02/14/2011 BY C010SLQ
DATE RECEIVED 2006 04 24 TIME TO SERVE (MINIMUM) 002 03 16
MINIMUM TERM 003 00 00 TIME TO SERVE (MAXIMUM) 008 03 16
MAXIMUM TERM 009 00 00 TIME OWED (MINIMUM)
JAIL TIME (DAYS) 0254 TIME OWED (MAXIMUM)
DATE SENTENCED PAROLE JAIL TIME (DAYS)
ORIG. MAX. EXP. DATE NET TIME OWED
DATE DECLARED DELINQUENT LIMITED CREDIT TIME POSSIBLE 00 06 00
DATE RETURNED SUPPLEMENTAL MERIT TIME POSS.
ORIG. DATE RECEIVED MERIT TIME POSSIBLE
DATE RELEASED GOOD TIME ADJUSTMENT
DATE FAILED TO RETURN GOOD TIME POSSIBLE 003 00 00
DATE ESCAPED LIMITED CREDIT TIME DATE 2011 02 09
ORIG. PAR. ELIG. DATE SUPPLEMENTAL MERIT ELIG DT
OTHER STATE SENT. DATE MERIT ELIGIBILITY DATE
DATE DISCHARGED PAROLE ELIGIBILITY DATE 2008 08 09
DATE REAFFIRMED PAROLE HEARING DATE/TYPE 2012 05 REAP
PRIOR TIME CREDIT TENTATIVE RELEASE DATE
MEPS MAXIMUM EXPIRATION DATE 2014 08 09
PAROLE BOARD DISCHARGE CONDITIONAL RELEASE DATE 2011 08 09
PRS PRS ME T.A.C. DATE/TYPE 2011 03 INIT
REMARKS 550 DAYS LGT @OCFS
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DIN 10A1145 BROWNLEE, BENJAMIN DATE COMPUTATION/ENTRY KRCLM40
LAST COMP. 91LOST GOOD TIME ADJUSTMENT DONE 05/09/2011 BY C010SLQ
DATE RECEIVED 2010 03 12 TIME TO SERVE (MINIMUM) 002 03 16
MINIMUM TERM 003 00 00 TIME TO SERVE (MAXIMUM) 008 03 16
MAXIMUM TERM 009 00 00 TIME OWED (MINIMUM)
JAIL TIME (DAYS) 0254 TIME OWED (MAXIMUM)
DATE SENTENCED PAROLE JAIL TIME (DAYS)
ORIG. MAX. EXP. DATE NET TIME OWED
DATE DECLARED DELINQUENT LIMITED CREDIT TIME POSSIBLE
DATE RETURNED SUPPLEMENTAL MERIT TIME POSS.
ORIG. DATE RECEIVED MERIT TIME POSSIBLE
DATE RELEASED GOOD TIME ADJUSTMENT 03 00 00
DATE FAILED TO RETURN GOOD TIME POSSIBLE 000 00 00
DATE ESCAPED LIMITED CREDIT TIME DATE
ORIG. PAR. ELIG. DATE SUPPLEMENTAL MERIT ELIG DT
OTHER STATE SENT. DATE MERIT ELIGIBILITY DATE
DATE DISCHARGED PAROLE ELIGIBILITY DATE 2008 08 09
DATE REAFFIRMED PAROLE HEARING DATE/TYPE 2012 05 REAP
PRIOR TIME CREDIT TENTATIVE RELEASE DATE
MEPS MAXIMUM EXPIRATION DATE 2014 08 09
PAROLE BOARD DISCHARGE CONDITIONAL RELEASE DATE 2014 08 09
PRS PRS ME T.A.C. DATE/TYPE FMAX
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16:06:08 Thursday, September 23, 2021

DIN 10A1145 BROWNLEE, BENJAMIN DATE COMPUTATION/ENTRY KRCLM40
LAST COMP. 92UPDATE OF PE, PH, TAC INFO DONE 05/25/2012 BY C000KLL
DATE RECEIVED 2010 03 12 TIME TO SERVE (MINIMUM) 002 03 16
MINIMUM TERM 003 00 00 TIME TO SERVE (MAXIMUM) 008 03 16
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JAIL TIME (DAYS) 0254 TIME OWED (MAXIMUM)
DATE SENTENCED PAROLE JAIL TIME (DAYS)
ORIG. MAX. EXP. DATE NET TIME OWED
DATE DECLARED DELINQUENT LIMITED CREDIT TIME POSSIBLE
DATE RETURNED SUPPLEMENTAL MERIT TIME POSS.
ORIG. DATE RECEIVED MERIT TIME POSSIBLE
DATE RELEASED GOOD TIME ADJUSTMENT 03 00 00
DATE FAILED TO RETURN GOOD TIME POSSIBLE 000 00 00
DATE ESCAPED LIMITED CREDIT TIME DATE
ORIG. PAR. ELIG. DATE SUPPLEMENTAL MERIT ELIG DT
OTHER STATE SENT. DATE MERIT ELIGIBILITY DATE
DATE DISCHARGED PAROLE ELIGIBILITY DATE 2008 08 09
DATE REAFFIRMED PAROLE HEARING DATE/TYPE 2014 05 REAP
PRIOR TIME CREDIT TENTATIVE RELEASE DATE
MEPS MAXIMUM EXPIRATION DATE 2014 08 09
PAROLE BOARD DISCHARGE CONDITIONAL RELEASE DATE 2014 08 09
PRS PRS ME T.A.C. DATE/TYPE FMAX
REMARKS 550 DAYS LGT @OCFS, 3/11 TAC
<PF3>EXIT <PF4>RETURN <PF6>COMMENTS <PF10>PRINT <CLEAR>EXIT

09/23/21 CCNSMXS RECEPTION/CLASSIFICATION SYSTEM KRCLM00
16:05:52 C999W410 U01 UPDATE PE, TRD, GRAD DATES AND PH DATE/TYPE
DIN: 10A1145 NAME: BROWNLEE, BENJAMIN NYSID: 09059294J
DATE RECEIVED: 03/12/2010 BY: 05/22/2014 C370NSC

HEARING DATE TIME ALLOWANCE COMM DATE
HEARING TYPE FMAX TIME ALLOWANCE COMM TYPE FMAX
TENTATIVE RELEASE DATE POST-RELEASE SUPERVISION
GRADUATION DATE PRS MAXIMUM EXPIRATION DT
PAROLE ELIGIBILITY DATE 2008 08 09 MAXIMUM EXPIRATION DATE 2014 08 09
MERIT ELIGIBILITY DATE ORIGINAL GOOD TIME
SUPP MERIT ELIG DATE GOOD TIME RESTORED +
PAROLE DISCHARGE DATE GOOD TIME LOST -
MAX EXP PAR SUPER (MEPS) GOOD TIME POSSIBLE = 0000 00 00
LIMITED CREDIT TIME POSS
LIMITED CREDIT TIME DATE CONDITIONAL RELEASE DATE 2014 08 09
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<PF6> COMMENT <PF10> PRINT

8

1

8

8

09/23/21

SLOC010

LOCATOR SYSTEM

FPMS

PAGE 001

CHRONOLOGICAL HISTORY DISPLAY

99 CENTRAL OFF

DIN 10A1145 NYSID 09059294J FACILITY OFF COUNTS LOCATION
 NAME BROWNLEE, BENJAMIN DOB 12/14/89 SEX M E/R NB

EFFECTIVE DATE	DATE ENTERED	SENDING FACILITY	RECEIVING FAC/ OUTCOUNT LOCATION	TRANSACTION TYPE	CELL
03/12/10	03/12/10		DWNSTATE REC	DFY ADM	03-0H-012
05/20/10	05/20/10	DWNSTATE REC	FISHKILL GEN	TRANSFER OUT	01-0H-009
05/20/10	05/20/10	DWNSTATE REC	FISHKILL GEN	TRANSFER IN	MB-04-212
07/05/10	07/05/10	FISHKILL GEN	FISHKILL PRC	INTRANS SENT	JH-0Q-001
07/05/10	07/05/10	FISHKILL GEN	FISHKILL PRC	INTRANS RECV	MB-11-120
07/13/10	07/13/10	FISHKILL PRC	FISHKILL GEN	INTRANS SENT	MB-11-120
07/13/10	07/13/10	FISHKILL PRC	FISHKILL GEN	INTRANS RECV	21-BC-031
07/15/10	07/15/10	FISHKILL GEN	MIDSTATE SOP	TRANSFER OUT	JH-0Q-028
07/15/10	07/15/10	FISHKILL GEN	MIDSTATE SOP	TRANSFER IN	01-0G-10B
08/02/10	08/02/10	MIDSTATE SOP	MIDSTATE	INTRANS SENT	01-0G-09T
08/02/10	08/02/10	MIDSTATE SOP	MIDSTATE	INTRANS RECV	10-01-008
09/07/10	09/07/10	MIDSTATE SOP	AUBURN GENER	TRANSFER OUT	10-01-008
09/07/10	09/07/10	MIDSTATE SOP	DWNSTATE REC	INTRANS RECV	01-0F-005
09/09/10	09/09/10	DWNSTATE REC	AUBURN GENER	INTRANS SENT	01-0F-005
09/09/10	09/09/10	MIDSTATE SOP	AUBURN GENER	TRANSFER IN	SH-UE-006
10/12/10	10/12/10	AUBURN GENER	FIVE POINTS	INTRANS SENT	SH-UG-002
10/13/10	10/13/10	AUBURN GENER	FIVE POINTS	INTRANS RECV	MH-00-106
10/14/10	10/14/10	FIVE POINTS	AUBURN GENER	INTRANS RECV	SH-UG-002
10/15/10	10/15/10	AUBURN GENER	FIVE POINTS	INTRANS SENT	SH-UG-002
10/15/10	10/15/10	AUBURN GENER	FIVE POINTS	INTRANS RECV	MH-00-101
10/19/10	10/19/10	FIVE POINTS	AUBURN GENER	INTRANS SENT	MH-00-104
10/19/10	10/19/10	FIVE POINTS	AUBURN GENER	INTRANS RECV	SH-UG-002
07/14/11	07/14/11	AUBURN GENER	WENDE	INTRANS SENT	HS-01-006
07/14/11	07/15/11	AUBURN GENER	WENDE	INTRANS RECV	MH-0B-005
07/19/11	07/19/11	WENDE	AUBURN GENER	INTRANS SENT	MH-0B-005
07/19/11	07/19/11	WENDE	AUBURN GENER	INTRANS RECV	SH-UC-004
10/04/11	10/04/11	AUBURN GENER	GRT MEAD GEN	TRANSFER OUT	0E-03-24S
10/04/11	10/04/11	AUBURN GENER	DWNSTATE REC	INTRANS RECV	01-0F-032
10/06/11	10/06/11	DWNSTATE REC	GRT MEAD GEN	INTRANS SENT	01-0F-032
10/06/11	10/06/11	AUBURN GENER	GRT MEAD GEN	TRANSFER IN	0E-08-18S
04/20/12	04/20/12	GRT MEAD GEN	ATTICA GEN	TRANSFER OUT	0F-01-24S
04/20/12	04/20/12	GRT MEAD GEN	DWNSTATE REC	INTRANS RECV	SH-1E-019
04/23/12	04/23/12	DWNSTATE REC	ATTICA GEN	INTRANS SENT	SH-1E-019
04/23/12	04/23/12	GRT MEAD GEN	ATTICA GEN	TRANSFER IN	RB-CW-007
12/17/12	12/17/12	ATTICA GEN	SING SING GN	TRANSFER OUT	RB-BW-018
12/17/12	12/17/12	ATTICA GEN	AUBURN DEPOT	INTRANS RECV	0D-08-14B
12/18/12	12/18/12	AUBURN DEPOT	SING SING GN	INTRANS SENT	0D-08-14B
12/18/12	12/18/12	AUBURN DEPOT	DWNSTATE REC	INTRANS RECV	SH-1E-014
12/20/12	12/20/12	DWNSTATE REC	SING SING GN	INTRANS SENT	SH-1E-014
12/20/12	12/20/12	ATTICA GEN	SING SING GN	TRANSFER IN	0C-02-110
01/02/13	01/02/13	SING SING GN	DWNSTATE REC	INTRANS RECV	01-0D-022
01/02/13	01/02/13	SING SING GN	DWNSTATE GEN	INTRANS SENT	01-0D-022
01/02/13	01/02/13	SING SING GN	DWNSTATE REC	INTRANS RECV	01-0D-013
01/08/13	01/08/13	DWNSTATE REC	SINGSING ABS	INTRANS SENT	SH-1E-020
01/08/13	01/08/13	DWNSTATE REC	SING SING GN	INTRANS RECV	0C-01-129
01/24/13	01/24/13	SING SING GN	MARCY RMHU	TRANSFER OUT	0C-01-125
01/24/13	01/24/13	SING SING GN	MARCY RMHU	TRANSFER IN	RM-A1-020
11/07/13	11/07/13	MARCY RMHU	WENDE RMU	INTRANS SENT	RM-B1-013
11/07/13	11/08/13	MARCY RMHU	WENDE	INTRANS RECV	MH-0B-001
11/12/13	11/12/13	WENDE	MARCY RMHU	INTRANS RECV	RM-B1-013

NOTE: THIS REPORT WAS RECONSTRUCTED USING HISTORICAL INMATE MOVEMENT DATA FROM
 COMPUTER RECORDS, AND IS ONLY AS ACCURATE AS IT WAS MAINTAINED BY THE
 FACILITY FOR THIS TIME PERIOD.

09/23/21

SLOC010

LOCATOR SYSTEM

FPMS

PAGE 002

CHRONOLOGICAL HISTORY DISPLAY

99 CENTRAL OFF

DIN 10A1145

NYSID 09059294J

FACILITY OFF COUNTS

LOCATION

NAME BROWNLEE, BENJAMIN

DOB 12/14/89

SEX M

E/R NB

EFFECTIVE DATE	DATE ENTERED	SENDING FACILITY	RECEIVING FAC/ OUTCOUNT LOCATION	TRANSACTION TYPE	CELL
12/21/13	12/21/13	MARCY RMHU	GRT MEAD GEN	INTRANS SENT	RM-B1-013
12/21/13	12/21/13	MARCY RMHU	GRT MEAD GEN	INTRANS RECV	MH-0B-006
12/30/13	12/30/13	GRT MEAD GEN	FIVE PT RMHU	INTRANS SENT	MH-0B-006
12/30/13	12/30/13	GRT MEAD GEN	FIVE PT RMHU	INTRANS RECV	77-0D-003
12/30/13	12/31/13	MARCY RMHU	FIVE PT RMHU	TRANSFER IN	77-0D-003
02/15/14	02/15/14	FIVE PT RMHU	FIVE POINTS	INTRANS SENT	77-0D-003
02/15/14	02/15/14	FIVE PT RMHU	FIVE POINTS	INTRANS RECV	MH-00-103
03/10/14	03/10/14	FIVE POINTS	FIVE PT RMHU	INTRANS SENT	MH-00-103
03/10/14	03/10/14	FIVE POINTS	FIVE PT RMHU	INTRANS RECV	77-0D-003
03/11/14	03/11/14	FIVE PT RMHU	FIVE POINTS	INTRANS SENT	77-0D-003
03/11/14	03/11/14	FIVE PT RMHU	FIVE POINTS	INTRANS RECV	MH-00-104
03/26/14	03/26/14	FIVE POINTS	FIVE PT RMHU	INTRANS SENT	HS-00-R05
03/26/14	03/26/14	FIVE POINTS	FIVE PT RMHU	INTRANS RECV	77-0D-003
03/26/14	03/26/14	FIVE PT RMHU	FIVE POINTS	INTRANS SENT	77-0D-003
03/26/14	03/26/14	FIVE PT RMHU	FIVE POINTS	INTRANS RECV	MH-00-104
04/14/14	04/14/14	FIVE POINTS	FIVE PT RMHU	INTRANS SENT	MH-00-104
04/14/14	04/14/14	FIVE POINTS	FIVE PT RMHU	INTRANS RECV	77-0D-003
08/08/14	08/08/14	FIVE PT RMHU		DISCH M E	77-0B-007

NOTE: THIS REPORT WAS RECONSTRUCTED USING HISTORICAL INMATE MOVEMENT DATA FROM
COMPUTER RECORDS, AND IS ONLY AS ACCURATE AS IT WAS MAINTAINED BY THE
FACILITY FOR THIS TIME PERIOD.

W. TIMOTHY LUCE
SHERIFF
tluce@co.seneca.ny.us

JOHN P. CLEERE
UNDERSHERIFF
jcleere@co.seneca.ny.us



Administration	315-220-3200
Corrections	315-220-3210
Records	315-220-3220
Civil Office	315-220-3230
Investigations	315-220-3240
Patrol Division	315-220-3250
Fax	315-220-3478

OFFICE OF THE SHERIFF
SENECA COUNTY

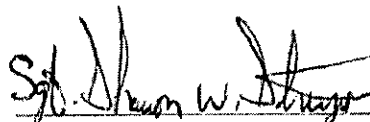
CERTIFICATION OF RECORDS

I, Shawn W. Struzyk, am employed by the Sheriff of Seneca County in the position of Sergeant in the Corrections Division of the Sheriff's Office. From 2011 to date, my duties have included sentence computation for individuals committed to the Sheriff's custody for the execution of definite sentences. Over that time period, I have been involved in the majority of all such sentence computations, either as the officer initially performing the computation or as the officer reviewing that computation. My current duties include oversight of all such sentence computations.

I have reviewed the attached one-page September 1, 2021 printout of the Sheriff's electronic records of the sentence computation for Benjamin Brownlee, who was committed to the custody of the Sheriff by the County Court of the State of New York in 2015 in the matter of *The People of the State of New York v. Benjamin Brownlee*, Seneca County Ind. No. 14-076. Except for the lines stating "From: Kierst, Lt" and "Completed on: September 01, 2021" (which were auto-filled at the time of the September 1, 2021 printing), the printout is a complete and accurate copy of Mr. Brownlee's sentence computation performed on September 29, 2015, and entered in the Sheriff's electronic records on that date by the officer who performed or reviewed the computation. Making the record was a regular practice of the regularly conducted Corrections Division activities of sentence computation and of making and keeping records of such sentence computation, for individuals committed to the Sheriff's custody for the execution of definite sentences. The record was kept in the course of those regularly conducted activities.

I certify under penalty of perjury that the foregoing is true and correct.

Executed: Seneca County, New York
October 6, 2021

 #634
SGT. SHAWN W. STRUZYK, #634
Seneca County Law Enforcement Center
6150 Route 96
Romulus, NY 1454



Seneca County Sheriff's Office

Romulus, New York 14541

Inmate Release Date Confirmation Form

CHN: 17193
Booking Number: 201400456
To: BROWNLEE, Benjamin J
From: Kierst, Lt
Completed On: September 01, 2021
Issued Date:

MAXIMUM SENTENCE SERVED Date of: 02/06/2015

You may EARN Good Behavior Allowance, if your behavior is in line with the Rules and Regulations of Seneca County Sheriff's Office.

You may earn 61 days Good Time Credit, resulting in a

MINIMUM SENTENCE SERVED Date of: 12/07/2014

If you have any days served at another Facility, or City Lock-up, that resulted in the current sentence, you shall refer to the Inmate Handbook to obtain this credit.

Charge: Aggravated Harassment-1st Degree

Docket Number:

Indictment Number:

Date of Arrival: 08/08/2014

Sentence Start Date: 09/29/2015

Sentence Length: 183

Time Served: 417

Good Time: 61

Days Suspended: 0

Weekend/Holidays: 0

Other: 0

Notes:

Prior time served - 417 days.

08/08/2014 - 09/28 = 417 days.

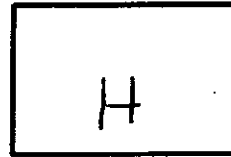
I certify that I have received a copy of this form and that the information contained in it has been explained to me.

Inmate's Signature: _____

BROWNLEE, Benjamin J

cc: Inmate's File

EXHIBIT COVER PAGE



EXHIBIT

Description of this Exhibit: *Western District court order of Denying*

Number of pages to this Exhibit: 9 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☒ United States Supreme Court
- ☐ Grand Jury

Orders on Motions

6:21-cv-06423-DGL Brownlee v.
The People of The State of New
York

HABEAS,PS-A,ProSe

U.S. DISTRICT COURT

U.S. District Court, Western District of New York

Notice of Electronic Filing

The following transaction was entered on 11/3/2021 at 3:01 PM EDT and filed on 11/3/2021

Case Name: Brownlee v. The People of The State of New York

Case Number: 6:21-cv-06423-DGL

Filer:

Document Number: 13

Docket Text:

DECISION AND ORDER Respondent's motion to dismiss the petition for lack of subject matter jurisdiction [11] is granted, and the petition for a writ of habeas corpus [1] is dismissed with prejudice. The Court also denies issuance of a certificate of appealability because petitioner has failed to make a substantial showing of a constitutional violation. Signed by Hon. David G. Larimer on 11/3/2021. *Copy of this Decision and Order sent by First Class Mail to petitioner Benjamin J. Brownlee on 11/3/2021 to his address of record. (KAH)*

-CLERK TO FOLLOW UP-

6:21-cv-06423-DGL Notice has been electronically mailed to:

Hannah Stith Long hannah.long@ag.ny.gov, CriminalAppealsHabeas@ag.ny.gov, hannah_long@yahoo.com

6:21-cv-06423-DGL Notice has been delivered by other means to:

Benjamin J. Brownlee

#BE3069 BS 2

/ California State Prison - Sacramento

100 Prison Road

PO Box 290066

Represa, CA 95671-0066

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

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41f42c7ce01940f58c7cbf30feb5c0340abed782a0277b8588f58d5f5a026]]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BENJAMIN J. BROWNLEE,

Petitioner,

DECISION AND ORDER

21-CV-6423L

v.

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

INTRODUCTION

Petitioner Benjamin Justin Brownlee has filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his June 3, 2015 conviction in Monroe County for Criminal Obstruction of Breathing or Blood Circulation, N.Y. Penal L. § 121.11. Respondent has moved to dismiss the petition for lack of subject matter jurisdiction, on the ground that when he filed the petition, petitioner was not in custody with respect to the conviction that he seeks to challenge here.

BACKGROUND

Petitioner has a lengthy criminal history, familiarity with which is needed to understand the basis for respondent's motion to dismiss.

In April 2006, petitioner was sentenced in New York State Supreme Court, New York County, to a term of three to nine years' imprisonment on a first-degree assault conviction stemming from petitioner's unprovoked attack on a stranger in a basement laundry room. He was released

from state custody on August 8, 2014, but immediately transferred to local custody for pretrial detention on two pending charges, one of which resulted in the conviction challenged here. Both those charges stemmed from events that occurred while petitioner was incarcerated on the assault conviction.

Concerning the conviction at issue here, petitioner was charged with strangulation in the second degree, a felony, arising out of his attack on a fellow prisoner. The case went to trial, and the jury acquitted petitioner of the strangulation charge but convicted him of the lesser included misdemeanor offense of criminal obstruction of breathing or blood circulation. He was sentenced to one year's imprisonment, which by law equates to 364 days, *see* Penal L. § 70.15(1-a(a)).

Since petitioner had never posted bail, he was in custody throughout the trial court proceedings. As explained by respondent and documented by state records, with credit for good time the effective term of petitioner's sentence was reduced to 257 days, meaning that the sentence was fully served on the date it was imposed. *See* Respondent's Brief (Dkt. #11-5) at 6 and exhibits cited therein.

Petitioner was still not released, though, because he was facing another charge stemming from his having thrown urine at a state correction officer. On September 29, 2015, he pleaded guilty to a misdemeanor charge of attempted aggravated harassment and was sentenced to six months' imprisonment. That sentence, too, was fully served on the day it was imposed, and he was released into the community that same day.

Upon release, petitioner traveled to Sacramento County, California. Five months after his arrival, he was arrested after throwing a puppy out of a second-story window onto the concrete pavement below. He pleaded *nolo contendere* to a felony charge of animal cruelty and was

sentenced on July 1, 2016 to five years' probation, with the condition that he serve 364 days in jail. The court gave petitioner until September 16, 2016 to report to jail.

Petitioner used that time to commit yet another crime, this time the murder of an elderly homeless woman. He was tried and convicted of first-degree murder and sentenced on September 1, 2017 to life imprisonment without the possibility of parole. He is currently serving that sentence in California.

Four years after the imposition of the sentence under attack here, petitioner perfected a direct appeal from the Monroe County Court judgment. The Appellate Division affirmed, *see People v. Brownlee*, 181 A.D.3d 1265 (4th Dep't 2020), the New York Court of Appeals denied leave to appeal, 35 N.Y.3d 1043 (2020), and the United States Supreme Court denied certiorari, 141 S.Ct. 1414 (2021).

Petitioner filed his habeas petition in this Court on May 14, 2021. He asserts one ground for relief, concerning an alleged *Brady* violation.

DISCUSSION

The federal writ of habeas corpus is only available to a person who is "in custody" at the time the petition is filed. *See* 28 U.S.C. §§ 2241(c), 2254(a); *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968). This requirement is jurisdictional. *Id.* "A petitioner who files a habeas petition after he has fully served his sentence and who is not subject to court supervision is not 'in custody' for the purposes of th[e] court's subject matter jurisdiction and his petition is therefore properly denied." *Hatchett v. Clark*, No. 20-cv-2044, 2021 WL 4262237, at *1 (E.D.Cal. Sept. 20, 2021) (citing *De Long v. Hennessey*, 912 F.2d 1144, 1146 (9th Cir. 1990)).

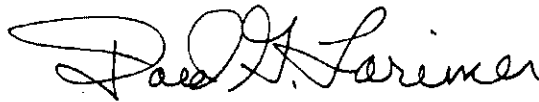
As the above factual recitation makes clear, petitioner was not in custody with respect to the 2015 unlawful-obstruction conviction on the date that he filed his petition. His sentence on that conviction had long since expired; in fact, it was effectively fully served the day it was imposed. Petitioner does not dispute, or even address respondent's arguments in this regard; his response to the motion to dismiss is essentially just a copy of his original petition and his state appellate briefs, which of course do not address this issue.

That petitioner is currently in prison in California (where he presumably will remain for the rest of his life) is of no moment. For jurisdictional purposes, it is not enough that the petitioner is incarcerated somewhere, for some reason. He must be in custody on the conviction that is the subject of his habeas petition. *See, e.g., Parks v. Warden*, No. 17-cv-3, 2018 WL 3437208 (S.D.Ohio July 17, 2018) (dismissing petition challenging fully-served Ohio sentences for robbery and trafficking, where petitioner was in custody of Indiana Department of Correction pursuant to Indiana conviction for unlawful possession of a firearm). As explained above, petitioner is not in custody on the 2015 conviction, nor was he when he filed his habeas petition. Respondent's motion to dismiss is therefore granted.

CONCLUSION

Respondent's motion to dismiss the petition for lack of subject matter jurisdiction (Dkt. #11) is granted, and the petition for a writ of habeas corpus (Dkt. #1) is dismissed with prejudice. The Court also denies issuance of a certificate of appealability because petitioner has failed to make a substantial showing of a constitutional violation.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
November 3, 2021.

Other Orders/Judgments

6:21-cv-06423-DGL Brownlee v.
The People of The State of New
York

HABEAS,PS-A,ProSe

U.S. DISTRICT COURT

U.S. District Court, Western District of New York

Notice of Electronic Filing

The following transaction was entered on 11/4/2021 at 2:22 PM EDT and filed on 11/4/2021

Case Name: Brownlee v. The People of The State of New York

Case Number: 6:21-cv-06423-DGL

Filer:

WARNING: CASE CLOSED on 11/04/2021

Document Number: 14

Docket Text:

JUDGMENT in favor of The People of The State of New York against Benjamin J. Brownlee.
Signed by Clerk of Court on 11/4/2021. (TF)

6:21-cv-06423-DGL Notice has been electronically mailed to:

Hannah Stith Long hannah.long@ag.ny.gov, CriminalAppealsHabeas@ag.ny.gov, hannah_long@yahoo.com

6:21-cv-06423-DGL Notice has been delivered by other means to:

Benjamin J. Brownlee
#BE3069 BS 2
California State Prison - Sacramento
100 Prison Road
PO Box 290066
Represa, CA 95671-0066

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

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UNITED STATES DISTRICT COURT

for the

Western District of NY

BENJAMIN J. BROWNLEE,

Plaintiff

v.

THE PEOPLE OF THE STATE OF NEW YORK,

Defendant

Civil Action No. 21-CV-6423L

JUDGMENT IN A CIVIL ACTION

The court has ordered that (check one):

☐ the plaintiff (name) _____ recover from the
defendant (name) _____ the amount of
_____ dollars (\$ _____), which includes prejudgment
interest at the rate of _____ %, plus post judgment interest at the rate of _____ % per annum, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (name) _____
_____ recover costs from the plaintiff (name) _____

☒ other: Respondent's motion to dismiss the petition for lack of subject matter jurisdiction is granted, and the petition for a writ
of habeas corpus is dismissed with prejudice.

This action was (check one):

☐ tried by a jury with Judge _____ presiding, and the jury has
rendered a verdict.

☐ tried by Judge _____ without a jury and the above decision
was reached.

☒ decided by Judge David G. Larimer
in favor of the Respondent, dismissing petition with prejudice.

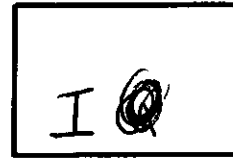
Date: 11/04/2021

CLERK OF COURT



Signature of Clerk or Deputy Clerk

EXHIBIT COVER PAGE



EXHIBIT

Description of this Exhibit: *united states second (2nd) circuit court of Appeals order of Denying*

Number of pages to this Exhibit: 4 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☒ United States Supreme Court
- ☐ Grand Jury

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 20th day of December, two thousand twenty-one,

Benjamin J. Brownlee,

Petitioner - Appellant,

v.

The People of The State of New York,

Respondent - Appellee.

ORDER

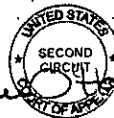
Docket Number: 21-2918

A notice of appeal was filed on November 23, 2021. The Appellant's Acknowledgment and Notice of Appearance Form due December 13, 2021 has not been filed. The case is deemed in default of FRAP 12(b), and LR 12.3.

IT IS HEREBY ORDERED that the appeal will be dismissed effective January 10, 2022 if the Acknowledgment and Notice of Appearance Form is not filed by that date.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 28th day of December, two thousand twenty-one,

Benjamin J. Brownlee,

Petitioner - Appellant,

v.

The People of The State of New York,

Respondent - Appellee.

ORDER

Docket No. 21-2918

A notice of appeal was filed on November 23, 2021. An applicant can appeal the denial of a petition for a writ of habeas corpus to challenge a state court conviction or a motion under 28 U.S.C. § 2255 to challenge a federal court conviction only if the district judge or this Court grants permission by issuing a certificate of appealability. See 28 U.S.C. § 2253. The district judge has denied permission by refusing to issue a certificate of appealability.

A motion may be made to this Court for a certificate of appealability. The motion must be filed within 28 days after the later of the date the district judge denied permission or the date the notice of appeal was filed. The motion must identify each issue that the appellant intends to raise on appeal and state, with respect to each issue, facts and a brief statement of reasons showing the denial of a constitutional right.

Instructions and forms for filing the motion are enclosed with this order. They are also available on the Court's website www.ca2.uscourts.gov.

IT IS HEREBY ORDERED that the appeal is dismissed effective January 18, 2022 unless by that date the applicant has filed a motion for a certificate of appealability that complies with this order.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court




**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

DEBRA ANN LIVINGSTON
CHIEF JUDGE

Date: May 26, 2022

Docket #: 21-2918pr

Short Title: Brownlee v. The People of The State of New

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 21-cv-6423

DC Court: WDNY

(ROCHESTER)

DC Judge: Larimer

NOTICE OF CASE MANAGER CHANGE

The case manager assigned to this matter has been changed.

Inquiries regarding this case may be directed to 212-857-8522.

W.D.N.Y.
21-cv-6423
Larimer, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 26th day of May, two thousand twenty-two.

Present:

Rosemary S. Pooler,
Robert D. Sack,
Alison J. Nathan,
Circuit Judges.

Benjamin J. Brownlee,

Petitioner-Appellant,

v.

21-2918

The People of The State of New York,

Respondent-Appellee.

Appellant, pro se, moves for a certificate of appealability. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because Appellant has not shown that "jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 478 (2000).

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court


Catherine O'Hagan Wolfe


EXHIBIT COVER PAGE



EXHIBIT

Description of this Exhibit: *united state second circuit court
Of Appeals order of Mandate Denying of rehearing.*

Number of pages to this Exhibit: 2 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☒ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

21-2918

Benjamin J. Brownlee
#BE-3069
California State Prison-Sacramento
100 Prison Road
Represa, CA 95671

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 15th day of August, two thousand twenty-two,

Present: Rosemary S. Pooler,
Robert D. Sack,
Alison J. Nathan,

Circuit Judges,

Benjamin J. Brownlee,

Petitioner - Appellant,

v.

The People of The State of New York,

Respondent - Appellee.

ORDER

Docket No. 21-2918

Appellant Benjamin J. Brownlee filed a motion for reconsideration and the panel that determined the motion has considered the request.

IT IS HEREBY ORDERED, that the motion is denied.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court

MANDATE

United States Court of Appeals
FOR THE
SECOND CIRCUIT

W.D.N.Y.
21-cv-6423
Larimer, J.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 26th day of May, two thousand twenty-two.

Present:

Rosemary S. Pooler,
Robert D. Sack,
Alison J. Nathan,
Circuit Judges.

Benjamin J. Brownlee,

Petitioner-Appellant,

v.

21-2918

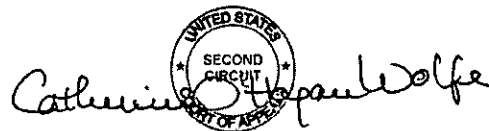

The People of The State of New York,

Respondent-Appellee.

Appellant, pro se, moves for a certificate of appealability. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because Appellant has not shown that "jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 478 (2000).

FOR THE COURT:


Catherine O'Hagan Wolfe, Clerk of Court

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit


MANDATE ISSUED ON 08/22/2022