

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

TRACY MCCARTER,

Defendant.

RECOMMENDATION OF  
DISMISSAL

RECEIVED  
Indictment No. 746/2020  
CENTRAL CLERK'S OFFICE

NOV 18 2022

SUPREME COURT  
CRIMINAL TERM  
NEW YORK COUNTY

**I. INTRODUCTION**

1. Under indictment number 746/2020, filed on September 30, 2020, the defendant is charged with one count of murder in the second degree, in violation of Penal Law Section 125.25(1), for fatally stabbing James Murray.

**II. PROCEDURAL HISTORY**

2. In May 2022, the People pursued a negotiated disposition under which Ms. McCarter would have entered a plea of guilty to manslaughter in the second degree and menacing in the second degree, without an admission of responsibility. Pursuant to the proposed plea, Ms. McCarter would have been permitted, after a year of mandated medical treatment, to have her manslaughter plea vacated. The Court rejected the proposed plea as impermissible under CPL 220.10.

3. In August 2022, the People moved to dismiss the instant indictment and requested leave to file a superior court information charging Ms. McCarter with manslaughter in the first degree.

4. On August 30, 2022, the Court denied the People's motion and ordered a trial on the murder charge. The Court held, among other things, that the "People's concern that a murder

charge is unwarranted here can be addressed and ameliorated at trial. Manslaughter in the first degree is a lesser included offense to murder in the second degree and can be submitted to the trial jury without the need for an SCI.”

### III. REASON FOR RECOMMENDATION

7. “[T]he essence of a District Attorney’s constitutional, statutory and common-law prosecutorial authority is the ‘discretionary power to determine whom, whether and how to prosecute [a criminal] matter.’” *Matter of Haggerty v. Himelein*, 89 N.Y.2d 431, 436 (1997) (quoting *Matter of Schumer v. Holtzman*, 60 N.Y.2d 46, 52 (1983)); *see also* *People v. Viviani*, 36 N.Y.3d 564, 577–78 (2021).

8. At this stage – with the proposed plea and reduced charge by SCI foreclosed<sup>1</sup> – the options remaining to the People are stark: to proceed or decline to proceed to trial on murder in the second degree. Given those options, the People decline to proceed.

9. Because “courts lack the authority to compel the prosecution of criminal actions,” the People recommend dismissal of the charge. *Matter of Soares v. Carter*, 25 N.Y.3d 1011, 1013 (2015); *see also id.* (“Any attempt by the Judge here to compel prosecution through the use of his contempt power exceeded his jurisdictional authority.”); *Matter of Cloke v. Pulver*, 243 A.D.2d 185, 188 (3rd Dep’t 1998) (“[The District Attorney’s] failure to seek an amendment or replacement of the indictment and his continued refusal to prosecute the case has frustrated the disposition process and left the Judge with very few options while the speedy trial clock continues to run.”).

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<sup>1</sup> Representing the case to the grand jury and submitting only a charge of manslaughter does not address the current murder charge, which would not be superseded or dismissed by a second indictment. *See* CPL 200.80.

#### IV. RECOMMENDATION

10. For the reason stated above, the People recommend that indictment number 746/2020 be dismissed.



Alvin L. Bragg, Jr.  
District Attorney

Date: November 18, 2022

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COUNTY OF NEW YORK**

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**RECOMMENDATION OF DISMISSAL**

**Indictment No. 746/2020**

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**Alvin L. Bragg, Jr.  
District Attorney  
New York County  
One Hogan Place  
New York, New York 10013  
(212) 335-9000**