

People v Tischler

2010 NY Slip Op 34060(U)

December 8, 2010

Supreme Court, Westchester County

Docket Number: 09-1580

Judge: Richard A. Molea

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
THE PEOPLE OF THE STATE OF NEW YORK

FILED and ENTERED
Dec. 8, 2010
WESTCHESTER
COUNTY CLERK

-against-

DECISION & ORDER

Indictment No. 09-1580

MATTHEW TISCHLER,

Defendant.

-----X
MOLEA, J.

Upon consideration of the defendant's instant motion brought pursuant to Criminal Procedure Law §420.40 for the deferment of his obligation to pay the mandatory surcharge and crime victims assistance fee which were imposed as part of his sentence under the above-referenced indictment, the Court has reviewed the *pro se* defendant's notice of motion and affidavit in support, and the affirmation in opposition and memorandum of law of Assistant District Attorney Adam D. Citron. Upon these submissions, the instant motion is decided as follows:

Procedural History

FILED
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TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

On June 23, 2010, the defendant entered a guilty plea before this Court to a single count of Grand Larceny in the third degree under the above-referenced indictment upon the Court's commitment to impose a sentence providing for an indeterminate term of imprisonment of between 2½ years and 5 years in conjunction with the imposition of a mandatory surcharge of \$300.00, a crime victim assistance fee of \$25.00 and a DNA databank fee of \$50.00. On August 12, 2010, this Court honored its sentence commitment and sentenced the defendant to an indeterminate term of imprisonment of between 2½ years and 5 years in conjunction with the

imposition of a mandatory surcharge of \$300.00, a crime victim assistance fee of \$25.00 and a DNA databank fee of \$50.00. The defendant now moves this Court to defer his obligation to pay the mandatory surcharge and crime victim assistance fee which were imposed as parts of his sentence under the instant indictment upon his claim that his obligation to pay the imposed surcharge and crime victim assistance fee during his term of incarceration presents a substantial hardship for him. The People oppose the defendant's instant application in all respects, asserting, in sum, that the defendant's moving papers are supported solely by conclusory claims which are insufficient under the applicable legal standards to merit the relief requested.

Conclusions of Law

CPL 420.40(2), governs the procedure through which a sentenced defendant may seek the deferral of the government's collection of the mandatory surcharge and crime victim assistance fee which he is required to pay pursuant to the terms of his imposed sentence. With respect to those sentenced defendants who are incarcerated in state prison when seeking such relief, it is well-settled that a meritorious application for the deferral of a surcharge and fees must be supported by credible and verifiable information which demonstrates that the collection of such fees from the inmate "would work an unreasonable hardship . . . over and above the ordinary hardship suffered by other indigent inmates" (*see, People v. Abdus-Samad*, 274 AD2d 666, 667, *lv. denied* 95 NY2d 862; *accord, People v. Kistner*, 291 AD2d 856). However, upon consideration of a deferment application, the reviewing court must remain "mindful of the mandatory nature of the surcharge, sex offender registration fee and DNA databank fee, and the

important criminal justice and victim services sustained by such fees” (CPL 420.40[3]).

Although the defendant offers this Court a conclusory claim of financial hardship, his supporting affidavit contains no information concerning his past, present or future prospects for securing funds other than his indication that he receives \$15.00 per week from DOCS as wages for his participation in an employment program in the correctional facility where he is presently confined. Of course, the Court recognizes that a percentage of such funds would be deducted from his prison inmate account by DOCS for the satisfaction of his surcharge and fees¹. However, the Court notes that the defendant has failed to provide any support for the proposition that the financial hardship experienced by him as a result of his present obligation to pay the imposed surcharge and fees is unreasonable when compared to other similarly situated inmates.

Upon consideration of the absence of factual support for the defendant’s conclusory claim of unreasonable hardship, the Court finds that there is no “credible and verifiable” information adduced within the defendant’s moving papers which demonstrates that the collection of any money from his inmate account would work an unreasonable hardship upon him which is in some manner distinct from that suffered by other similarly situated inmates (*see, People v. Abdus-Samad, supra*, at 667; *People v. Hazel*, 13 Misc.3d 728; *People v. Parker*, 183 Misc.2d 737).

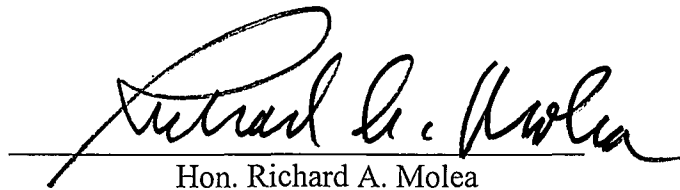
Based upon the foregoing, the Court finds that the defendant’s application for the

¹ Indeed, the Court notes with significance that the superintendent of the correctional facility where the defendant is confined pursuant to the terms of his imposed sentence must cause any outstanding (unpaid) amount of the mandatory surcharge, crime victim assistance fee and DNA databank fee which were imposed as conditions of his sentence to be collected from the inmate during his term of imprisonment from those funds credited to his inmate account or earned by him in a work release program (*see, Penal Law § 60.35[5][a]*).

deferment of his obligation to pay the mandatory surcharge of \$300.00 and the crime victim assistance fee of \$25.00 which were imposed as conditions of his sentence in this case is denied; therefore, the defendant must continue to bear the responsibility to pay these outstanding financial obligations to the State of New York through the collection of funds credited to his inmate account or earned by him in a work release program during his term of imprisonment by DOCS pursuant to Penal Law § 60.35(5)(a).

The foregoing shall constitute the Decision and Order of the Court.

Dated: White Plains, New York
December 8, 2010



Hon. Richard A. Molea
Acting Justice of the Supreme Court

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