

New York State Off. Victim Servs. v Murray
2011 NY Slip Op 32218(U)
August 15, 2011
Supreme Court, Albany County
Docket Number: 3530-11
Judge: Joseph C. Teresi
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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

NEW YORK STATE OFFICE OF VICTIM SERVICES,
on behalf of Violeta Hernandez, the crime victim, and all
other victims of respondent's crimes,

Petitioner,

-against-

DECISION and ORDER
RJI NO.: 01-11-103756
INDEX NO.: 3530-11

JAMES MURRAY, Inmate # 95-A-4417,

Respondent.

Albany County Supreme Court All Purpose Term, August 1, 2011
Assigned to Justice Joseph C. Teresi

APPEARANCES:

Hon. Eric T. Schneiderman
Attorney General of New York State
Edward M. Scher, Esq.
Assistant Attorney General, of counsel
The Capitol
Albany, NY 12224

James Murray, 95-A-4417
Pro Se Respondent
Upstate Correctional Facility
PO Box 2001
Malone, New York 12953

TERESI, J.:

In 1995 James Murray was convicted of Sodomy in the First Degree and sentenced to an indeterminate term of seven to twenty one years in state prison.

Petitioner, upon learning that Murray was to be paid \$50,000.00 from New York State's

Comptroller (hereinafter “the Fund”), commenced this proceeding pursuant to Executive Law §632-a(6) seeking the issuance of a preliminary injunction partially restraining such payment. Murray opposes the petition. Because Petitioner demonstrated its entitlement to a preliminary injunction, the petition is granted.

For the issuance of a preliminary injunction under Executive Law §632-a, the Petitioner must show a likelihood of success on the merits, irreparable injury and that the equities favor injunctive relief. (New York State Crime Victims Bd. v. Majid, 193 Misc.2d 710 [Sup. Ct. Alb. Co. 2002]; New York State Crime Victims Bd. ex rel. Hayes v. Sookoo, 77 AD3d 1227 [3d Dept. 2010]; CPLR §§6311 and 6312).

The crime victim’s claim has a likelihood of success on the merits. As set forth above, Murray was convicted of Sodomy in the First Degree. “A criminal conviction is prima facie evidence . . . of its underlying facts in a subsequent civil action.” (S. T. Grand, Inc. v. City of New York, 32 NY2d 300, 303 [1973]; Dona v. Levin, 263 AD2d 602, 603 [3d Dept. 1999]). Because Murray’s criminal acts have already been proven beyond a reasonable doubt in the criminal case, the crime victim has a strong likelihood of success in her civil action.

Petitioner also demonstrated irreparable injury. “The victim... of [Murray’s] crimes . . . will be irreparably damaged if [Murray] is allowed to spend the funds in his inmate account before a court can determine whether he is required to pay that money over to his victim[.]” (New York State Crime Victims Bd. v. Majid, supra at 715).

The equities too clearly favor injunctive relief. The interests of justice require that the crime victim be compensated for all injuries caused by Murray’s violent and damaging crime against her. The issuance of a preliminary injunction guarantees that the Fund will remain

available to the crime victim in the event she obtains a judgment. Additionally, Respondent's basic necessities are provided by DOCS, obviating his current need of these funds. Nor does it appear that the Fund is otherwise needed for the support of a third party.

Accordingly, Petitioner established its entitlement to a preliminary injunction and its petition is granted.

In opposition, Murray has submitted numerous statements and documents not one of which controverts Petitioner's preliminary injunction showing or demonstrates his entitlement to the relief he seeks.¹

First, to the extent that Murray objects to the preliminary injunction restraining attorney's fees and 10% of the Fund, the petition does not seek such relief. These statutory exemptions to a crime victim's recovery (Executive Law §632-a (3) and CPLR §5205[k]) are not subject to the preliminary injunction issued herein and Petitioner has already requested the Comptroller to release such funds.

Murray also failed to demonstrate that the statute of limitations on the crime victim's claim has expired. Executive Law §632-a (3) establishes the applicable statute of limitations by stating that "any crime victim shall have the right to bring a civil action in a court of competent jurisdiction to recover money damages from a person convicted of a crime of which the crime victim is a victim... within three years of the discovery of any... funds of a convicted person." Although Murray established that he received a prior settlement award of \$20,000 in 2002, i.e.

¹ Although Murray submitted a "Notice of Motion" with his various submissions, because it did not set forth when it was "noticed to be heard" (CPLR §2214[b]), this Court has no jurisdiction over it. (Burstin v. Public Service Mut. Ins. Co., 98 AD2d 928, 928 [3d Dept. 1983]; Hawkins v. McCall, 278 AD2d 638 [3d Dept. 2000]; Bianco v. Ligreci, 298 AD2d 482 [2d Dept. 2002]). As such, the motion will be considered as opposition papers only.

more than three years before commencement of this proceeding, he did not establish with any evidentiary proof his crime victim's knowledge of such funds. His allegations concerning her knowledge are unsupported and conclusory. As such, this portion of Murray's opposition does not defeat Petitioner's preliminary injunction showing. This finding is made without prejudice to Murray pursuing a statute of limitations defense in the crime victim's action against him.

Similarly unavailing are each of Murray's allegations challenging his underlying conviction, his treatment while in prison and his settlement of the Federal Court action that created the Fund. This proceeding is limited. It addresses only the preliminary injunction sought by petitioner, and Murray's above challenges must be pursued either by a direct appeal or a post judgment motion.

Lastly, Murray failed to demonstrate his entitlement to use the Fund to hire counsel. Here, Murray has submitted no proposed retainer agreement. He also failed to specify the attorney he would hire, the rate charged or the scope of the legal work involved. Nor has he demonstrated his inability to pay attorney's fees with the monies he is receiving from the Fund (i.e. the 10% not subject to the preliminary injunction granted herein). The only detail Murray provided was his desire to retain defense counsel in the crime victim's action against him. However, such action has yet to be commenced and, in view of the foregoing lack of proof, Murray failed to set forth sufficient facts to allow his use of the Fund for such defense. As such, the preliminary injunction issued herein is not limited to allow Murray's use of the Fund for attorney's fees. Upon a proper record, Murray may renew this request.

To the extent not specifically addressed above, the parties' remaining contentions have been examined and found to be lacking in merit.

Accordingly, the petition is granted; Petitioner shall submit an Order, within ten days of the date of this Decision and Order and on notice to Murray, granting the relief requested herein.

This Decision and Order is being returned to the attorneys for the Petitioner. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: August 15, 2011
Albany, New York


JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Order to Show Cause, dated May 23, 2011; Affidavit of Edward Scher, dated May 23, 2011; Verified Petition, dated May 19, 2011, with attached Exhibits A-C.
2. Affirmation of A.J. Bosman, dated June 30, 2011, with attached Exhibit A.
3. Notice of Motion, dated June 22, 2011; Affidavit of James Murray, dated June 22, 2011.
4. Unsworn submission of James Murray, dated June 9, 2011, with unnumbered exhibits.
5. Affidavit of Eileen Nerf, dated July 14, 2011; Affidavit of Violeta Hernandez, dated July 13, 2011; Affidavit of Eamonn Trainor, dated July 13, 2011; Affidavit of Edward Scher, dated July 29, 2011, with Attached Exhibit A-L.