

People v Coleman

2011 NY Slip Op 33458(U)

September 28, 2011

Sup Ct, Kings County

Docket Number: 7677/2010

Judge: Patricia DiMango

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, CRIMINAL TERM: PART PD85

-----X
THE PEOPLE OF THE STATE OF NEW YORK :
 :
 :
 -against- :
 :
 TAYEA COLEMAN, :
 :
 Defendant. :
-----X

DECISION AND ORDER

Indictment No. 7677/2010

HON. PATRICIA M. Di MANGO:

The defendant, pro se, has moved for an order granting him deferment¹ of his obligation to pay the mandatory surcharge and other fees imposed at the time of sentencing under the captioned indictment until some time after his incarceration has been completed. The People oppose the defendant's application in its entirety.

In deciding this motion, the court has considered the defendant's moving papers, the People's opposition, and has reviewed the official court files. Additionally, this court has referred to the official "Directives" of the Department of Correctional Services ("DOCS") and also relies on prior discussions with DOCS personnel regarding the interpretation and implementation of these Directives.

The defendant was convicted here of Robbery in the Second Degree, upon a plea of guilty, and was sentenced thereon, on January 26, 2011, to a determinate term of five years' incarceration and five years' post-release supervision. At sentencing, a Mandatory Surcharge of \$300, a DNA fee of \$50, and a \$25 Crime Victim Assistance Fee were imposed upon the defendant, for a total of \$375.00 in fees under the captioned indictment. The defendant also indicates that he has a concurrent Queens conviction which too carries a surcharge and fees totaling \$375.00. All of these fees and charges are collectible from inmate funds.

The defendant, currently an inmate at the Greene Correctional Facility in Coxsackie, is seeking to defer payment of the mandatory surcharge and other imposed fees on the ground

¹ While the defendant's papers also make reference to an application for a waiver of the surcharge and related fees, in his prayer for relief he requests deferment of these fees and it is apparent that the true thrust of his motion is for deferment.

that he is unable to pay these charges, has no one to assist him in the payment of same, and that these charges are working an unreasonable hardship upon him which is "over and above the ordinary hardships suffered by other indigent inmates."

Specifically, in his supporting affidavit, the defendant avers that he is indigent, owns no stocks, bonds, realty, bank accounts, or any property which could be liquidated in order to pay these fees, and he asserts that he has not divested himself of any assets and also that his family cannot afford to assist in his payments. The defendant further indicated in his papers that he had a "prison stipend of \$00.00" and that the current balance in his prison account was also "\$00.00." In demonstration of his lack of income and zero account balance, the defendant attached a copy of his "Inmate Monthly Statement Report,"² which, on its face, reflects that the defendant had no moneys on account and that \$750.00 were owing upon his Kings and Queens County surcharges and fees.

(This was the extent of the defendant's submissions and averments.)

The People have opposed the defendant's motion. They assert that the surcharge cannot be waived, and, to the extent the defendant is seeking deferment of the surcharge (and fees), the People oppose same on the ground that he has provided no compelling reason to defer payment of the mandatory surcharge and fees.

The People contend that Mr. Coleman's assertions of indigence are insufficient to support a claim of undue hardship upon himself or his immediate family as might warrant a deferment of payment of these fees.

The People additionally maintain that, as is the case with all inmates, Mr. Coleman is regularly provided with items deemed necessary to maintain proper standards of hygiene, as well as with stationery supplies.

Accordingly, the People urge denial of the motion due to the mandatory nature of these fees and the defendant's failure to establish that the collection of these fees from his inmate funds imposes an unreasonable hardship upon himself or his family, namely, a hardship which is "over and above the ordinary hardship suffered by other indigent inmates."

² This statement was issued by the Ulster Correctional Facility and covers the period March 1, 2011 through March 31, 2011.

Discussion

The court commences its discussion of the defendant's application with the observation that, when the defendant brought this motion, he had only been incarcerated in the State correctional system for a short period of time and had also been transferred from one facility to another. Thus, it is not surprising or unusual that he had no inmate funds or prison earnings yet. However, the court believes that this was a temporary situation and presumes that the defendant is now earning typical inmates' prison wages (see, Correction Law § 187), which will be applied towards his mandatory surcharges and fees, in the usual manner and at the regular rates.

Next, to the extent the defendant's papers do contain a request for waiver of the surcharge and fees here imposed, the Criminal Procedure Law does not authorize the outright waiver of the mandatory surcharge or DNA databank fee³ for any defendant. Accordingly, this court is without authority to waive these charges and thus such relief is not available to the defendant and must be denied.

The court now turns to the application for deferment, which is authorized under CPL §§ 420.40 and 420.35(1) under certain conditions.

While some courts have held to the contrary with regard to a defendant sentenced to a period of incarceration greater than 60 days (see, e.g., People v Hopkins, 185 Misc2d 312 [Kings Co. 2000]), this court is of the view that it is permissible, pursuant to CPL 420.40, to defer payment, in whole or in part, of the mandatory surcharge and other fees (see, People v Kistner, 291 AD2d 856 [4th Dept. 2002]; accord, People v Camacho, 4 AD3d 862 [4th Dept. 2004], lv. denied, 2 NY3d 761; People v Smith, 309 AD2d 1282, 1283 [4th Dept. 2003]; see also, People v Domin, 13 AD3d 391, 392 [2nd Dept. 2004 -- citing with approval, People v Huggins, 179 Misc2d 636, 638 (Greene County Ct. 1999)], lv. denied, 4 NY3d 830 [2005]; People v Pierce, 16 Misc3d 1126(A) [Sup.Ct. NY Co. 2007]).

Nevertheless, this does not mean that a defendant is entitled to deferral merely for the asking. Rather, in order to obtain deferral of the surcharge and other mandatory fees, the defendant must establish, by credible and verifiable information, that present (installment) payment of such fees would work an "unreasonable hardship on defendant over and above the ordinary hardship suffered by other indigent inmates" (Kistner, supra, 291 AD2d at 856; People v Rodriguez, 292 AD2d 646, 647 [3rd Dept. 2002], lv. denied, 98 NY2d 654; People v

³ See, CPL §§ 420.35(2) and 420.30(3); see also, People v Owens, 10 AD3d 619 [2nd Dept. 2004], lv. denied, 4 NY3d 766 [2005].

Abdus-Samad, 274 AD2d 666, 667 [3rd Dept. 2000], lv. denied, 95 NY2d 862; People v Parker, 183 Misc2d 737, 738 [Sup. Court, Kings; 2000]).

However, in his papers, Mr. Coleman does not demonstrate that the payment of the surcharge and fee would work an "unreasonable hardship" on him or his immediate family. Indeed, aside from a conclusory statement to that effect, the defendant provides no facts or explanation in support of this claim. Absent such a showing it would seem and may be concluded that the defendant here is situated no differently from any other incarcerated, indigent defendant of limited means. Moreover, the defendant does not claim to have any unusual expenses or particular obligations, nor any special requirements which are not being provided to him while incarcerated.

Meanwhile, it is the court's understanding that all inmates are regularly provided with the essentials necessary for hygiene (see, People v Hazel, 13 Misc3d 728, 730-731 [Sup. Ct. Bronx Co., 2006]; People v Parker, supra, 183 Misc2d at 738) and are apparently also given stationery items and supplies, and that, therefore, it is not necessary to use inmate funds to purchase such items.

Accordingly, notwithstanding the defendant's alleged financial constraints and lack of outside income, this court finds that the defendant here has not demonstrated that his personal situation is such that the court should intervene and provide relief in the form of deferment of the payment of the statutorily mandated charges.

Otherwise stated, the defendant has failed to make the requisite showing that payment of the surcharges and other fees is imposing upon him or his immediate family, if any, such an "unreasonable hardship" as would provide a basis for deferment; nor has he even raised matters which would require a hearing thereon. Therefore, the instant motion is, respectfully, denied in its entirety.

The foregoing constitutes the decision and order of the court.

Dated: Brooklyn, New York
September 28, 2011

The defendant is hereby advised of his right to apply to the Appellate Division, Second Department, 45 Monroe Place, Brooklyn, New York 11201 for a certificate granting leave to appeal from this determination. This application must be made within 30 days of service of this decision. Upon proof of financial inability to retain counsel and to pay the costs and

expenses of the appeal, the defendant may apply to the Appellate Division for the assignment of counsel and for leave to prosecute the appeal as a poor person and to dispense with printing. Application for poor person relief will be entertained only if and when permission to appeal or a certificate granting leave to appeal is granted. (22 NYCRR § 671.5.)

E N T E R ,



J.S.C.

ENTERED
OCT - 9 2011
NANCY T. SUNSHINE
COUNTY CLERK