

**People v Squitieri**

2012 NY Slip Op 32298(U)

August 22, 2012

Supreme Court, Kings County

Docket Number: 12801-07

Judge: William E. Garnett

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: CRIMINAL TERM, Part 11

THE PEOPLE OF THE STATE OF NEW YORK  
  
-against-  
  
VINCENT SQUITIERI,  
  
Defendant.

DECISION AND ORDER

SCI #'s 12801-07, 108-08,  
109-08, 110-08,  
118-08, 119-08,  
120-08

Date: August 22, 2012

By: Hon. William E. Garnett

On January 8, 2008, the defendant pleaded guilty on each of the above Superior Court Informations (SCI) to Burglary in the Third Degree. On January 18, 2008, the defendant was sentenced in accordance with the plea agreement to concurrent terms of 3 ½ to 7 years. At that time, a \$250 mandatory surcharge, a \$20 Crime Victim Assistance fee and a \$50 DNA databank fee were imposed on each SCI.

The defendant moves, pursuant to CPL §420.40, to defer payment of the surcharges or, in the alternative, to waive the mandatory surcharges.

In support of his motion, the defendant avers, in a sworn affidavit, that he is indigent and cannot pay the surcharges. In an unsworn notice of motion to proceed as a poor person submitted in this case, the defendant states that he has no outside source of income. The defendant also advised the Court, in a letter accompanying his motion, that he has had no money for the past four and a half (4 ½) years because of the surcharges and fees.

Waiver of Mandatory Surcharge

CPL §420.35(2) specifically prohibits a court from waiving the mandatory surcharges and related fees. Therefore, this motion is denied.

Deferment of the Mandatory Surcharges and Fees

Generally, a "defendant's request to defer the payment of the mandatory surcharge[s] until his release from incarceration [is] premature." People v. Domin, 13 A.D.3d 391, 392 (2d Dept. 2004), citing CPL §60.35(5)(a) and People v. Huggins, 179 Misc.2d 636, 638 (Co. Ct., Greene Co. 1999).

There is no explicit statutory authority in CPL §420.40 and PL §60.35 for deferring payment of the surcharge and fees for an imprisoned defendant. However, trial courts have implicit authority under CPL §420.40 to defer payment in accordance with the standards set forth in subdivision 2 of that section. People v. Camacho, 4 A.D.3d 862 (4<sup>th</sup> Dept. 2004); People v. Kistner, 291 A.D.2d 856 (4<sup>th</sup> Dept. 2002); See also, People v. Pierce, 16 Misc.3d 1126(A) (Sup. Ct., NY Co. 2007).

Nevertheless, deferral is not had for the mere asking. A defendant is required by CPL §420.40(2) to provide the court with "credible and verifiable information" that, due to his indigency, the payment of the surcharge would work an unreasonable hardship on him or his immediate family. People v. Kistner, supra at 856;

People v. Abdus-Samad, 274 A.D.2d 666, 666-667 (3rd Dept. 2000); People v Pierce, supra; People v. Parker, 183 Misc.2d 737 (Sup. Ct., Kings Co. 2000).

As an example, in People v. Parker, supra at 738, the defendant, in support of his motion to defer payment, asserted that "he had been homeless since 1992 and that he [was] presently having 40% of his biweekly earnings of \$6.40 deducted to cover, in equal measure, his mandatory surcharge and the 'gate fees' (monies to be paid to him upon release) leaving him with only \$3.70 to purchase incidentals." The Court held that since the defendant's basic needs, i.e. food, lodging, hygienic supplies and clothing, were provided by the penal institution, the defendant had not asserted facts sufficient to warrant the relief sought. The Court explained that the defendant had not distinguished his situation from that of any other inmate who was unemployed prior to his incarceration and who had no family or friends to give him extra money while incarcerated. Moreover, the Court noted that the defendant had not demonstrated that he was responsible for supporting an immediate family member who had been adversely impacted by the deductions from his prison earnings.

In this case, the defendant's general claim of indigency fails to establish that the surcharges and fees would work an unreasonable hardship on him or his immediate family. The defendant merely alleges that he is unable to pay the surcharges and fees

because he is indigent, indicates that he has no outside source of income and claims that he has had no money available to him in the past four and a half (4 ½) years due to the payment of the surcharges.

The defendant has not submitted any supporting proof that he is indigent and that his inmate account is empty. Moreover, the defendant has not alleged that he is responsible for supporting an immediate family member who has been adversely affected by the imposition of the mandatory surcharges and fees.

The defendant's assertion that he has had no money for the past four and a half (4 ½) years due to the collection of the surcharges and fees is contrary to the Department of Corrections policy and thus lacks credibility. New York State Department of Corrections Directive #2788(IV)(B)(3) permits the collection of only two encumbrances, i.e., two surcharges, at one time. "When two encumbrances are active up to 40% of weekly earnings and 100% of outside receipts will be collected" for the purpose of repayment. New York State Department of Corrections Directive #2788(IV)(B)(3)(b). Therefore, if the defendant works, sixty (60) percent of his wages should be available for his personal use.

The defendant's moving papers lack any information distinguishing his circumstances from those of other indigent inmates. The defendant's economic condition is not unlike any other indigent inmate who has had multiple surcharges imposed on him.


Consequently, this Court finds that the defendant has failed to provide credible and verifiable information to establish that the collection of the mandatory surcharges and other assessments works an unreasonable hardship on him over and above the ordinary hardships inherent in incarceration and suffered by similarly-situated inmates.

The defendant has incurred seven surcharges and related assessments because he pleaded guilty to seven separate and distinct felonies. This Court, as a matter of law, was required to impose those fees.

The defendant has not demonstrated his entitlement to deferral of the surcharges and fees. Accordingly, based on the record before this Court, the defendant's motion to defer the mandatory surcharges and fees or, in the alternative, to waive them is denied.

This opinion shall constitute the decision and order of the Court.

Dated: August 22, 2012  
Brooklyn, New York

  
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William E. Garnett  
Acting Justice of the Supreme Court

