

People v Lindsay

2013 NY Slip Op 34058(U)

August 13, 2013

Supreme Court, Westchester County

Docket Number: 11-00282-01

Judge: Robert A. Neary

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AUG 13 2013
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

FILED

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**FILED
AND
ENTERED**
ON 8-13-2013
**WESTCHESTER
COUNTY CLERK**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

- against -

DECISION AND ORDER

AKEEM LINDSAY,

Ind. No. 11-00282-01

Defendant.

-----X

NEARY, J.

The defendant moves, pursuant to CPL §420.40, for an order granting a financial hardship hearing for the purpose of deferral of the mandatory surcharge and other fees imposed upon him at sentencing. The defendant also asks to be provided with a free transcript of the trial and all essential proceedings for appellate purposes. The People oppose the defendant's application.

The Court has reviewed the following submitted papers by the parties:

- Defendant's Motion for Deferral of Mandatory Surcharge
- Due to Financial Hardship with exhibits
- People's Affirmation in Opposition with Memorandum of Law.

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The defendant was convicted after a jury trial of Murder in the Second Degree, Attempted Assault in the First Degree, Assault in the Second Degree and Criminal Possession of a Weapon in the Third Degree. This Court sentenced the defendant to an aggregate term of thirty-eight and half (38 ½) years to life imprisonment with ten (10) years post release supervision. In addition, the Court imposed the mandatory surcharge, DNA fee and crime victim assistance fee totaling three hundred seventy-five dollars (\$375.00).

On June 3, 2013, the Court received the instant motion in which the defendant states that he is indigent. The defendant has provided no other information regarding his financial circumstances.

The Court finds that the defendant has failed to demonstrate his entitlement to the relief requested. In order to obtain deferral of the surcharge and other mandatory fees, the defendant must establish, by credible and verifiable information, that his payment of such fees would work an "unreasonable" hardship on him over and above the ordinary hardship suffered by other indigent inmates. [See *People v. Kistner*, 291 AD2d at 856; *People v. Rodriguez*, 292 AD2d 646, 647, 738 NYS2d 758 (3rd Dept., 2002), *lv. denied* 98 NY2d 654, 772 NE2d 616, 745 NYS2d 513; *People v. Abdus-Samad*, 274 AD2d 666, 667, 712 NYS2d 63 (3rd Dept., 2000), *lv. denied* 95 NY2d 862, 738 NE2d 365, 715 NYS2d 217; *People v. Parker*, 183 Misc2d 737, 738, 704 NYS2d 790 (Sup. Court, Kings, 2000)].

CPL §420.40(2) makes it clear that a defendant, in order to obtain a deferment of the mandatory surcharge, needs to establish that due to his indigence, the payment of said surcharge would work an unreasonable hardship on him or his immediate family (in which case

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the Court must issue an order deferring payment which is to be filed as a judgment by the County Clerk to be collected in the same manner as a civil judgment). CPL §420.40(3), in turn, stresses that the Court must be mindful of the "mandatory nature of the surcharge, and the important criminal justice and victim services sustained by such fees." Balancing these two considerations, and taking into account the defendant's basic needs (food, lodging, hygienic supplies and clothing) are being provided by the penal institution where he is housed, this Court finds that the defendant has not asserted facts sufficient to warrant the relief that he seeks, i.e., that he has failed to distinguish his present situation from that of any other inmate who was unemployed prior to his incarceration and has no friends or family to give him extra money while incarcerated. In addition, the defendant has not established that he is in any way responsible for the support of any immediate family member who has been adversely affected by possible deductions from future jail earnings. In short, there has been no demonstration of any "unreasonable" hardship on the defendant or his immediate family to justify a deferment of his mandatory surcharge. [See *People v. Parker*, 183 Mis2d 737]. The motion is, therefore, denied.

The defendant's motion for a free copy of the stenographic minutes of the trial and related proceedings is denied as moot as the application has already been granted by the Appellate Division, Second Department in connection with his pending appeal.

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This constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York
August 13, 2013

Robert A. Neary

ROBERT A. NEARY
ACTING SUPREME COURT JUSTICE

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