

People v Neal

2013 NY Slip Op 30074(U)

January 3, 2013

Sup Ct, Kings County

Docket Number: 2484/2009

Judge: Patricia DiMango

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, CRIMINAL TERM, PART 15

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THE PEOPLE OF THE STATE OF NEW YORK :
 :
 :
 -against- :
 :
 CYPPEHY NEAL, :
 :
 :
 Defendant. :
-----X

DECISION AND ORDER
Indictment No. 2484/2009

HON. PATRICIA M. Di MANGO:

The defendant, pro se, has moved pursuant to CPL § 420.40 for an order permitting her to defer payment of the mandatory surcharge (and other fees) imposed upon her at sentencing until her release. The People have opposed the motion in all respects.

In deciding this motion, the court has reviewed the defendant’s moving papers and supplemental submissions, the People’s opposition, and the official court file. The court has also referred to the official “Directives” of the Department of Corrections and Community Supervision (“DOCCS”) and relies on prior discussions with DOCCS personnel regarding the interpretation and implementation of these Directives.

The defendant was convicted of Criminal Sale of a Controlled Substance in the Third Degree upon a guilty plea, and was sentenced thereon, on May 15, 2012, to a determinate sentence of two and one-half years’ incarceration followed by two years’ post-release supervision. At sentencing, a Mandatory Surcharge of \$300, a DNA fee of \$50, and a Crime Victim Assistance Fee of \$25 were all imposed upon the defendant, for a total of \$375 in charges and fees. Payments towards all of these charges are presently being collected from the defendant’s inmate funds, presumably at the usual rate.¹

The defendant, who is now an inmate at Beacon Correctional Facility, is seeking to defer payment of her mandatory surcharge (and fees) on the grounds that she has insufficient

¹ It is apparently the policy of DOCCS to deduct 20% from an inmate’s earnings, and 50% from any funds given to the inmate from family and friends, and to apply same towards the surcharge and other fees (see, People v Hazel, 13 Misc3d 728, 730 [Sup.Ct. Bronx Co. 2006]). However, where a defendant has one or more additional sets of surcharges and fees, or other inmate payment obligations (which payment obligations DOCCS terms "encumbrances"), then 40% of that inmate's weekly earnings and 100% of his/her outside receipts may be collected and will be applied to pay down all of such defendant’s encumbrances (see, DOCCS Directive No. 2788 [IV] [B] [3] [b], [c]; see also, Matter of Begun v Goord, 249 AD2d 861 [3rd Dept. 1998]).

income and property to presently pay these charges, and that the current collection of same from her inmate funds is working an unreasonable hardship on her and her immediate family.

In support of her application, Ms. Neal has submitted her affidavits in which she asserts her indigence and details how her minimal prison earnings are insufficient to both pay off the surcharge (and fees) and also to permit her to purchase items she requires for her personal hygiene and for her personal correspondence, namely, postage.

Specifically, the defendant avers that, being an incarcerated inmate with no property or other assets, her prison wages are her only source of income and the only moneys from which the surcharge can be paid as she receives no financial assistance from outside sources aside from occasional "help" from friends or family. According to the defendant, she earns approximately \$6.00 every two weeks in prison wages, and it is from the balance of these funds (after the facility has deducted a percentage towards payment of her encumbrances) that she must pay for whatever items she requires which are not issued to her.

It is not clear to this court how many encumbrances defendant has and thus it is unclear at what rate Ms. Neal's earnings are garnished. She states that her "prison wages are encumbered 20%/40%" and that in the event she were to receive any moneys from outside sources, these "would be encumbered 50%/100%." She further alleges that, after facility deductions for her encumbrance(s), she is left with only "approximately 20%" of her \$6.00 bi-weekly pay² with which to purchase "necessary hygiene items" as well as stamps for her personal mail so that she might maintain contact with her children. However, this amount is not sufficient to allow her to purchase at the commissary all of the items she requires for her personal hygiene, namely, shampoo, deodorant, lotion and moisturizing soap for her skin condition, as well as stamps for personal correspondence, none of which are provided by the facility. Additionally, Ms. Neal claims that it is necessary for her to buy extra toilet paper and sanitary napkins because the amount issued by DOCCS is "frequently insufficient" and she is not given additional supplies when she has exhausted her quota. Thus, she maintains that she is not being provided with her basic needs, nor with the essentials for appropriate hygiene.

Since the defendant is unable to purchase those additional items she deems necessary "due to her encumbrance," she contends that she suffers a greater deprivation than an inmate without an encumbrance on her account who would have access to all of her inmate funds.

Accordingly, the defendant requests that she be granted an order permitting her to defer payment of her surcharge (and fees) until she is released from incarceration.

² In a supplemental paper, the defendant asserts that the "State . . . take[s] in full" her \$6.00 bi-weekly wages. This court has not, however, been provided with any documentation of the defendant's income or facility charges and expenses.

The People oppose the defendant's motion on the grounds that she has not provided any compelling reason to defer payment of the mandatory surcharge and other fees, and that her assertions of indigence and inability to purchase certain personal items are insufficient to support a claim of undue hardship upon herself or her immediate family as would warrant such a deferment. Additionally, the People contrarily contend that, as with all inmates, the defendant is regularly supplied with items deemed necessary to maintain proper standards of hygiene, as well as with stationery supplies such as pens, paper, envelopes, and postage. The People also point out that defendant includes no documentation proving her inability to acquire such items.

Therefore, the People urge denial of the motion due to the mandatory nature of these fees and the defendant's failure to substantiate any allegations of unreasonable hardship upon herself or her family, that is, that the defendant has not demonstrated any hardship on her or her family which is "over and above the ordinary hardship suffered by other indigent inmates."

Discussion

Although 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 [Sup Ct, Kings County 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 [2004]; People v Smith, 309 AD2d 1282, 1283 [4th Dept 2003]; see also, People v Domin, 13 AD3d 391, 392 [2d Dept 2004] [citing with approval, People v Huggins, 179 Misc2d 636, 638 (Greene County Ct 1999)], lv denied, 4 NY3d 830 [2005]; People v Coffman, 36 Misc3d 1207(A) [Sup.Ct. Bronx Co. 2012]; People v Pierce, 16 Misc3d 1126(A) [Sup Ct, NY County 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 mandatory surcharge and related 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" (CPL § 440.40 [2]; Kistner, supra, 291 AD2d at 856; People v Rodriguez, 292 AD2d 646, 647 [3d Dept 2002], lv denied, 98 NY2d 654 [2002]; People v Abdus-Samad, 274 AD2d 666, 667 [3d Dept 2000], lv denied, 95 NY2d 862 [2000]; People v Parker, 183 Misc2d 737, 738 [Sup Ct, Kings County 2000]; see also, CPL § 420.40 [2]).

Notwithstanding the defendant's limited income and financial constraints, this court finds that the defendant here has failed to establish any particular hardship which is out of the

ordinary and would warrant court intervention and, hence, deferment of the payment of the statutorily mandated surcharge.

Rather, it seems that Ms. Neal is situated no differently from any other incarcerated, indigent defendant receiving minimal institutional wages. Although she mentions certain personal care items she deems to be hygienic necessities, she does not claim to have any unusual, necessary expenses or special requirements which are not being provided to her while incarcerated. Nor do any of her claims set her apart from other inmates who also are unable to purchase items they wish to have and do not have friends or relatives who are able to supply them with same.

In response to the defendant's argument that her encumbrance causes her to "suffer more deprivation than an inmate who has no encumbrance on her account and who can access her entire [inmate] wages and monies that come in from outside sources," the court observes that, notwithstanding that some inmates may have more funds at their disposal from their own personal resources or by having family and friends who are able to provide them with additional funds or supplies, this is not the standard for assessing an inmate's hardship. Thus, while it may be unfortunate that Ms. Neal cannot afford to purchase certain personal care items or postage stamps, this alleged "deprivation" is not a proper basis for granting a deferral of the mandatory charges, as her professed "hardship" is not an unreasonable one which is greater than that suffered by other indigent inmates.

Addressing the defendant's assertion that she is required to purchase shampoo, deodorant, lotion, and moisturizing soap (she claims the state-issued soap is "harsh" on her skin), it is the court's understanding that all inmates are regularly provided with the essentials necessary for hygiene (see, People v Hazel, supra, at 730-731 [absent a contrary showing, it may be presumed that correction officials are providing for defendant's basic needs, "including any essentials for appropriate hygiene in a prison setting"]; People v Parker, supra, 183 Misc2d at 738).

Unfortunately, while there are many items which one might deem essential to one's personal hygiene and grooming, in the realm of personal care, DOCCS' standard for what is "necessary"³ may be quite different. Thus, while an inmate might believe that shampoo, deodorant or lotion should be among the hygiene products provided to all inmates, rather than having to be purchased with inmate funds, these particular items are apparently not considered "necessary" by the New York State Commission of Correction, which sets the minimum standards for confinement in correctional facilities (see, 9 NYCRR 7612.5; DOCCS Directive No. 4009 [V]; see also, Correction Law § 45 [6]; People v Hazel, supra, at 730-

³ See Directive No. 4009 (dated 7/15/2011), which enumerates "those items necessary for an inmate's cleanliness, health, and morale."

731). That being the case, this court cannot conclude that one's inability to obtain non-“necessary” items should be ruled a “hardship.” Since all inmates are in the same situation in that such desired items are not supplied as a matter of course, this deprivation, even if deemed a hardship, is no different or greater for this defendant, as compared to any other indigent defendant.

It should further be noted that, despite the defendant’s claim to the contrary, it is the court’s understanding that inmates are provided with sufficient quantities of toilet paper and sanitary napkins (see, 9 NYCRR § 7612.5). To the extent that Ms. Neal asserts that she often finds the quantities to be insufficient, such items are to be replenished on an as-needed basis (see, 9 NYCRR § 7612.5 [c]; DOCCS Directive No. 4009 [VI] [A]). If that is not taking place, the defendant should bring the matter to the attention of the appropriate prison authorities.

The defendant also asserts that she is required to purchase stamps for her personal correspondence because DOCCS “does not issue stamps to [her] at all.” As confirmed by reference to DOCCS Directives and by DOCCS personnel, an inmate receives weekly free postage for privileged correspondence but is expected to purchase stamps in the commissary for personal correspondence (see, DOCCS Directives Nos. 4421 [721.3] [a] and 4422 [III] [D]). Thus, although the People contend that an inmate receives free postage stamps, they are mistaken with respect to stamps for personal correspondence (as opposed to legal or other official correspondence, which is governed by different guidelines).

Nevertheless, in this respect also, the defendant is not alone and stands in the same position as other indigent inmates. Thus, insofar as she apparently does have some spendable income, it is up to Ms. Neal to prioritize how she allocates her funds for commissary purchases, and if sending personal mail to her children and family is important to her, she is in a position to purchase some stamps.

The defendant has not otherwise shown that her children will suffer or do without necessities because her prison moneys are being garnished for her surcharge obligations.

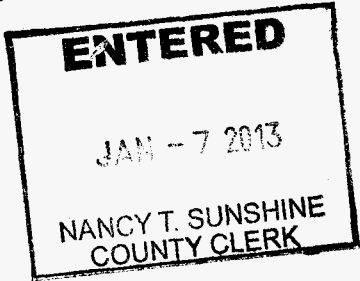
In conclusion, this court finds that the defendant has not demonstrated the requisite “unreasonable hardship” that payment of the surcharge and other fees is imposing upon her or her immediate family as would provide a basis for deferment.

Therefore, in light of the defendant's failure to establish such “unreasonable hardship,” and further, bearing in mind the mandatory nature of the surcharge and fees and the important

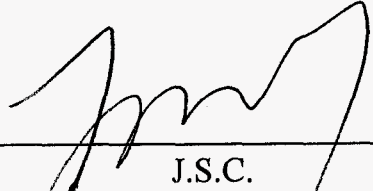
goals served by collection of these charges (see, CPL § 420.40 [3]), the motion to defer the mandatory surcharge and other fees is, respectfully, denied, without a hearing.

The foregoing constitutes the decision and order of the court.

Dated: Brooklyn, New York
January 3, 2013



E N T E R ,



J.S.C.

You are hereby advised that your right to an appeal from the order determining your motion is not automatic except in the single instance where the motion was made under CPL §440.30(1-a) for forensic DNA testing of evidence. For all other motions under Article 440, you must apply to a Justice of the Appellate Division for a certificate granting leave to appeal. This application must be filed within 30 days after you are served by the District Attorney or the court with the court order denying your motion.

The application must contain your name and address, indictment number, the questions of law or fact which you believe ought to be reviewed, and a statement that no prior application for such certificate has been made. You must include a copy of the court order and a copy of any opinion of the court. In addition, you must serve a copy of your application on the District Attorney.

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