

People v Bennett

2013 NY Slip Op 30676(U)

March 28, 2013

Sup Ct, Kings County

Docket Number: 5598/2009

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-

SHAQUANA BENNETT,

Defendant.

DECISION AND ORDER

Indictment No. 5598/2009

-----X
HON. PATRÍCIA M. Di MANGO:

The defendant, pro se, has brought a motion "to waive any and all mandatory surcharges levied against" her. Additionally and alternatively, the court and the People deem this to be an application by the defendant, pursuant to CPL § 420.40, to have the payment of the mandatory surcharge and other fees imposed at sentence deferred to a future time, namely until after her release from incarceration. The People have opposed this motion in all respects.

In deciding this motion, the court has considered the defendant's moving papers, the People's opposition, and has reviewed the official court file. Additionally, this court has referred to the official "Directives" of the Department of Corrections and Community Supervision ("DOCCS") and also relies on prior discussions with DOCCS personnel regarding the interpretation and implementation of these Directives. Upon due consideration of all of the foregoing, the court determines that the motion must be denied in all respects.

The defendant was convicted of Manslaughter in the First Degree and Endangering the Welfare of a Child under the captioned indictment, upon pleas of guilty, and was sentenced thereon, on March 21, 2012, to concurrent sentences of imprisonment of ten years and one year, respectively, to be followed by 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 all imposed upon the defendant, for a total of \$375 in charges and fees.

The defendant, currently an inmate at Bedford Hills Correctional Facility, is seeking to waive or defer payment of her mandatory surcharge and the other imposed fees on the ground that she is indigent and has no present means of paying these charges.

In support of her application, Ms. Bennett has submitted affidavits in which she asserts her indigence, indicating that she has no property, assets, bank accounts, or income "exclusive of [her] correctional facility wages," and that she receives "insufficient financial support from

family and friends." She does not state, however, what she earns at the Bedford Hills Correctional Facility or what support she does receive from family or friends; nor does she provide any documentation reflecting her prison wages, inmate account status, or otherwise establishing her lack of financial resources. No other information is furnished by the defendant in support of her motion, be it for "waiver" or deferral of payment of her \$375.00 obligation.

The People oppose the defendant's motion in all respects. To the extent the defendant is seeking a waiver of payment of the surcharge and fees, the People assert that such a waiver is prohibited by statute. The People also oppose allowing Ms. Bennett to defer payment of the mandatory surcharge and other fees on the ground that she has provided no compelling reason to defer payment thereof. The People cite to the defendant's lack of documentation of her financial situation, and they further note that she has failed to advance any claim of undue hardship upon herself or upon her immediate family in order to establish the requisite "unreasonable hardship" which would warrant such a deferment.

Accordingly, the People urge denial of the motion due to the mandatory nature of these fees and the defendant's failure to demonstrate any hardship on her which is "over and above the ordinary hardship suffered by other indigent inmates."

Discussion

Addressing first the defendant's request that "any and all mandatory surcharges levied against [her]" be waived, the court notes that the Criminal Procedure Law does not authorize the outright waiver of any of the mandatory surcharges, DNA databank fees or the crime victim assistance fees for this defendant.¹ Hence, that branch of Ms. Bennett's motion seeking a waiver cannot be entertained and she is denied such relief.

The court now turns to the deferment branch of the defendant's motion.

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 [Sup.Ct. 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

¹See, CPL § 420.35 (2); see also, People v Owens, 10 AD3d 619 (2d Dept 2004), lv denied, 4 NY3d 766 (2005); People v Morrison, 36 Misc3d 880, 882 [Sup. Ct. NY Co. 2012] ; but see, People v Brian L., 17 Misc3d 724 [Watertown City Ct. 2007 – finding lack of waiver provision for disabled persons unconstitutional]. Also, legislation was proposed in 2011 to repeal the waiver prohibition, but was not passed.

(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 Coffman, 36 Misc3d 1207(A) [Sup.Ct. Bronx Co. 2012]; 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 Abdus-Samad, 274 AD2d 666, 667 [3rd Dept. 2000], lv. denied, 95 NY2d 862; People v Parker, 183 Misc2d 737, 738 [Sup. Court, Kings Co. 2000]; see also, CPL § 420.40 [2]).

Review of the defendant's entire submission, even in the most favorable light possible, leads to the inescapable conclusion that the defendant's application is utterly deficient in this regard.

In her motion papers, the defendant does not even indicate what she earns in prison wages. Nevertheless, while failing to reveal and document her prison earnings, Ms. Bennett does not deny that she receives wages as an inmate. Accordingly, this court may presume that the defendant is earning typical inmates' prison wages (see, Correction Law § 187).

The defendant also does not state how much money she is regularly paying toward her \$375 surcharge/fee obligation, either from wages or otherwise from her inmate account.

With regard to this too, the court can only presume that Ms. Bennett's prison wages and other inmate funds, if any, are being applied towards her mandatory surcharge and fees in the usual manner.

That being the case, it is the court's understanding that the surcharge and fees are typically collected at the rate of 20% from inmate earnings and 50% from any outside funds given to the inmate where there is one payment obligation on the inmate (or one collective set of payment obligations) (see, People v Hazel, 13 Misc3d 728, 730 [Sup.Ct. Bronx Co. 2006]). Such payment or repayment owed by the inmate is termed an "encumbrance." The deduction process is different for certain other payment obligations (such as for "advances," "gate money," or court fees) or where a defendant is paying off two (or more) active "encumbrances." (see DOCCS Directive No. 2788 [IV] [B] [3] [b], [c]; see also, Matter of

Begun v Goord, 249 AD2d 861 [3rd Dept. 1998]). In the latter case, greater percentages of inmate funds are applied to the inmate's payment obligations.

Here, however, the defendant has not even shown what moneys are being taken from her, nor what other financial burdens, familial support obligations or necessary expenses she actually has, if any, other than the \$375 obligation known to this court; nor has the defendant alleged that she has any basic or special needs which are not being met. Ms. Bennett's papers are silent as to all of these details and she has not provided any proof of her financial situation.

In sum, the defendant has not alleged and demonstrated to this court, by credible and verifiable information, that the payment of the surcharge and fees would work an "unreasonable hardship" on her or her immediate family, such that court intervention in the form of a deferment would be warranted. On the contrary, it would seem that Ms. Bennett is situated no differently from any other incarcerated, indigent defendant receiving only minimal institutional wages.

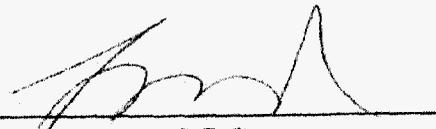
Therefore, in light of the defendant's failure to establish the requisite "unreasonable hardship," and further, bearing in mind the mandatory nature of the surcharge and fees and the important goals served by collection of these charges (see, CPL § 420.40 [3]), the motion to waive or defer the mandatory surcharge and other fees is, respectfully, denied in its entirety, without a hearing.

The foregoing constitutes the decision and order of the court.

Dated: Brooklyn, New York
March 28, 2013



E N T E R ,



J.S.C.

You are hereby advised that your right to an appeal from this order determining your motion is not automatic. In order to bring an appeal from this order, 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 your being 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.

You are further advised that, upon proof of financial inability to retain counsel and to pay the costs and expenses of the appeal, you 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.)

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