

<b>People v Carmichael</b>
2019 NY Slip Op 33906(U)
January 31, 2019
Supreme Court, Westchester County
Docket Number:
Judge: Susan M. Capeci
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

- against -

**FILED**

JAN 31 2019

ARTHUR CARMICHAEL,

TIMOTHY C. IDONI  
COUNTY CLERK  
WESTCHESTER  
-----X

CAPECI, J.:

**FILED  
AND  
ENTERED**  
ON 1-31 2019  
**WESTCHESTER  
COUNTY CLERK**

DECISION AND ORDER  
Indictment No. 17-1033

The defendant was convicted upon a plea of guilty to criminal sale of a controlled substance in the third degree (P.L. 220.39 (1)) before this Court, and was sentenced on September 19, 2018, as a second drug felony offender, to a determinate term of imprisonment of 3 years. The defendant now moves pursuant to CPL 390.50 for disclosure of a copy of his presentence report, citing that he has "important needs" for the disclosure. The People oppose the motion on the ground that the request is premature since he has failed to demonstrate that he has actually been notified of an impending parole board hearing and that the NYSDOCCS website indicates he is not eligible for a parole hearing until January 2020.

CPL 390.50 states:

"Any pre-sentence report or memorandum submitted to the court pursuant to this article...in connection with the question of sentence is confidential and may not be made available to any person or public or private agency except where specifically required or permitted by statute or upon specific authorization of the court" (CPL 390.50 (1)).

It has been repeatedly held that there is no constitutional right to disclosure of a presentence report (People v Peace, 18 NY2d 230 (1966); People v LaRocca, 16 Misc3d 1118A (County Ct., Westchester Co. 2007); People v Delatorre, 2 Misc3d 385 (County Ct., Westchester Co. 2003)). The controlling authority in the Second Department provides that where the defendant has cited no specific statutory authority for disclosure of the report to him, he can only obtain such disclosure "upon specific authorization of the court" (Thomas v Scully, 131 AD2d 488 (2d Dept 1987)).

In addition, CPL 390.50 (2)(a) provides:

Upon written request, the court shall make a copy of the presentence report, other than a part or parts of the report redacted by the court pursuant to this paragraph, available to the defendant for use before the parole board for release consideration or an appeal of a parole board determination. In his or her written request to the court the defendant shall affirm that he or she anticipates an appearance before the parole board or intends to file an administrative appeal of a parole board determination. The court shall respond to the defendant's written request within twenty days from receipt of the defendant's written request.

CPL § 390.50 (2) (a).

With respect to this statutory provision, as revised in 2010 (2010 Session Laws No. 5, ch. 56, §5, Part OO), it is clear the defendant must affirm, upon a request of the court for disclosure of the PSR, in writing, "that he or she anticipates an appearance before the parole board or intends to file an administrative appeal of a parole board determination" (CPL 390.50 (2) (a), supra).

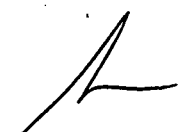
A showing of need for a presentence report may be satisfied by demonstrating that an upcoming parole board hearing has been scheduled (see Gutkaiss v People of the State of New York, 11 AD3d 845 (3d Dept 2004); Kilgore v People of the State of New York, 274 AD2d 636 (3d Dept 2000)).

The defendant seeks disclosure of the presentence report, however, he does not identify any particular reason for the disclosure other than his "important needs" for it, which remain unspecified. As noted above, the applicable statute, CPL 390.50(1), provides that presentence reports are confidential and are only to be disclosed "upon specific authorization of the court." Since the defendant in this case has not indicated that he has been given actual notice that a parole board hearing has been scheduled on his behalf, nor has he identified any other specific reason for its disclosure, he has not demonstrated to the Court that it should be disclosed to him. Accordingly, the defendant's motion for disclosure of the presentence report is denied at this time.

The Court considered the following papers on this motion: Defendant's Motion for Disclosure of Presentence Report dated November 27, 2018, Letter in support dated December 3, 2018. People's Affidavit in Opposition dated December 26, 2018, Exh. 1.

This Decision constitutes the Order of the Court.

Dated: White Plains, New York  
January 31, 2019



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HON. SUSAN M. CAPECI  
A.J.S.C.

To: Anthony A. Scarpino, Jr.  
Westchester County District Attorney  
111 Dr. Martin Luther King Jr. Blvd.  
White Plains, New York 10601  
Att: Lisa M. Denig, Esq.  
Assistant District Attorney

Arthur Carmichael  
Defendant pro se  
DIN # 18-A-3715  
Lakeview Shock Incarceration Correctional Facility  
P.O. Box T  
Brocton, New York 147-16-0679