

This opinion is uncorrected and subject to revision in the Official Reports. This opinion is not available for publication in any official or unofficial reports, except the New York Law Journal, without approval of the State Reporter or the Committee on Opinions (22 NYCRR 7300.1)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM: PART K-TRP

P R E S E N T:

HON. SEYMOUR ROTKER,
Justice.

-----X

THE PEOPLE OF THE STATE OF NEW YORK

- against -

Indictment No. 5039-87

Motion: Release of Pre-sentence Report

LOUIS TATTA,

Defendant.

-----X

LOUIS TATTA, Pro Se

For the Motion

NEW YORK CITY DEPT. OF PROBATION

By: PAMELA GOLDFEDER, ESQ

Takes no position

Upon the foregoing papers, and due deliberation had, the motion is granted to the extent that a redacted copy of the pre-sentence report is to be furnished to the defendant by the Department of Probation. See the accompanying memorandum this date.

Dated: October 1, 2001
Kew Gardens, New York

SEYMOUR ROTKER, Acting J.S.C.

SUPREME COURT, QUEENS COUNTY
CRIMINAL TERM, PART K-TRP

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

- against -

Indictment No. 5039-87

LOUIS TATTA,

MEMORANDUM DECISION

Defendant.

-----X

By motion dated August 24, 2001 the defendant seeks an order pursuant to CPL 390.50(2) directing that he be provided with a copy of the presentence investigation report prepared in connection with the instant indictment. The Department of Probation has filed an affirmation dated September 7, 2001 which takes no position with respect to the defendant's motion.

The defendant's right to a redacted copy of the presentence report for use in connection with the a direct appeal of his case or for use in connection with his appearance before the parole board or with an administrative appeal of a denial of parole is well established.

In People v. Wright, 206 AD2d 337, 338 [1st Dept 1994], appeal denied 84 NY2d 873 [1994], the Appellate Division held that "since appellant has a clear right to review the pre-sentence reports for the use before the Parole Board....and since a showing of relevance is not required, the court should have made the report available."

Similarly, in In the Matter of Legal Aid Bureau, Inc. v. Armer, 74 AD2d 737 [4th Dept 1980], the Appellate Division held that the defendant had "a clear right to review the pre-sentence reports for the purpose of preparing briefs and for use before the parole board."

The availability of a copy of the report for use in connection with other collateral matters is less clear, see, People v. Shader, 233 AD2d 717 (3rd Dept. 1996). In the case of collateral proceedings, the defendant is required to make a "proper factual showing for the need thereof", see, Matter of Blanche

v. People, 193 AD2d 991 (3rd Dept. 1993).

The defendant's affirmation in connection with his motion states that he needs a copy of the report in connection with the appeal of a denial of a petition pursuant to Article 78 of the CPLR..

The Article 78 proceeding was brought by the defendant to challenge the Parole Board's August 30, 2000 denial of his application for release to parole supervision. The petition was dismissed by Order of the Supreme Court and the defendant appealed to the Appellate Division. The defendant claims that a copy of the report was reviewed in camera by the Article 78 court and formed part of the basis for its denial of his petition.

Although the Court is of the opinion that the content of the report has little or no relevance to the issues raised by the defendant's appeal of the denial of his Article 78 application, it is clear that, whatever the result of the appeal is, the defendant will be appearing again before the Parole Board. When the defendant reappears before the Board, it will be mandated by Law (see, Executive Law 259-i (1)(a);(2)(c)) to consider the content of the report. Should the defendant seek a copy of the report in connection with his reappearance before the Board, he would clearly entitled to same under the holdings in Armer, supra and Wright, supra..

Therefore, the Court finds that the defendant has established sufficient facts to warrant the Court to exercise its discretion and to grant disclosure of a copy of the report in the interests of justice and of judicial economy.

Based upon the foregoing, the defendant's motion for the release of his pre-sentence report is granted to the extent that the Department of Probation is directed to redact any and all confidential materials, including, but not limited to names, addresses, and telephone numbers and to send a copy of the redacted report to the defendant. See, People v. Shader, supra.

The Clerk of the Court is directed to furnish the defendant with a copy of this Order and decision.

Order entered accordingly.

Kew Gardens, New York
Dated: October 1 ,2001

