

People v Johnson

2007 NY Slip Op 30000(U)

March 9, 2007

Supreme Court, Kings County

Docket Number: 0001499

Judge: William E. Garnett

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: APF1

THE PEOPLE OF THE STATE OF NEW YORK

-against-

LEONARD JOHNSON,

Defendant.

DECISION AND ORDER

SCI#S 1499-2006
1591-2006

Date: March 9, 2007

By: Hon. William E. Garnett

On March 2, 2006, the defendant pled guilty in two cases to Burglary in the Third Degree (PL §140.20). On March 13, 2006, in each case, the defendant was adjudicated a Youthful Offender and sentenced to 1 to 3 years. These sentences were to run concurrently. A \$250 mandatory surcharge, \$20 Crime Victim Assistance Fee and \$50 DNA fee were imposed in each case.¹

The defendant, pro se, moves pursuant to CPL §420.40 to defer payment of these surcharges. In support of his motion, the defendant avers, in a sworn affidavit, that he is unable to pay the surcharges in that he is incarcerated, makes only \$2.25 per week in prison wages, receives no outside help from any friends or family and relies on his prison wages to purchase necessary items that the State does not provide, i.e. stamps, extra soap, extra toothpaste and other items.

¹The defendant also seeks to defer the surcharges imposed in connection with his conviction on Queens SCI #781-2006. This application will not be considered by this court.

Deferment of the Mandatory Surcharges and Fees

While there is no explicit statutory authority in CPL §420.40 and PL §60.35 for deferring payment of the surcharge and fees of a defendant imprisoned in excess of 60 days, appellate courts have concluded that trial courts have implicit authority under CPL §420.40 to defer payment in accordance with the standards set forth in subdivision 2 of that section. People v. Kistner, 291 AD2d 856 (4th Dept. 2002); People v. Abdus-Samad, 274 AD2d 666 (3rd Dept. 2000).

Deferment is not had for the asking. A defendant is required by CPL §420.40(2) to provide the court with "credible and verifiable information" that, due to his indigency, the payment of the surcharge would work an unreasonable hardship on him or his immediate family. People v. Kistner, supra; People v. Abdus-Samad, supra at 66; People v. Parker, 183 Misc2d 737 (Sup. Ct., Kings Co. 2000).

In People v. Parker, supra, the defendant, in support of his motion, asserted that "he had been homeless since 1992 and that he [was] presently having 40% of his biweekly earnings of \$6.40 deducted to cover, in equal measure, his mandatory surcharge and the "gate fees" (monies to be paid to him upon release) leaving him with only \$3.70 to purchase incidentals."

The Court held that since the defendant's basic needs, i.e. food, lodging, hygienic supplies and clothing, were provided by the


penal institution, the defendant had not asserted facts sufficient to warrant the relief sought. The Court explained that the defendant had not distinguished his situation from that of any other inmate who was unemployed prior to his incarceration and who had no family or friends to give him extra money while incarcerated. Moreover, the Court noted that the defendant had not demonstrated that he was responsible for supporting an immediate family member who had been adversely affected by the deductions from his prison earnings.

Here, the sole allegations in support of his motion are that the defendant is unable to pay the surcharges because he is incarcerated, only makes \$2.25 per week in prison wages and receives no outside help from friends or family. The defendant has failed to establish that the mandatory surcharges and other mandatory assessments would work an unreasonable hardship on him over and above the ordinary hardship suffered by other indigent inmates and inherent in incarceration.

Accordingly, based on the record before this court, the defendant's motion to defer the mandatory surcharges is denied in its entirety.

This opinion shall constitute the decision and order of the Court.

Dated: March 9, 2007
Brooklyn, New York



William E. Garnett
Acting Justice of the Supreme Court

