

People v Smith

2007 NY Slip Op 30511(U)

April 4, 2007

Supreme Court, Kings County

Docket Number:

Judge: Raymond Guzman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS – PART 9

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

DECISION AND ORDER
Indictment #2197/93

-against-

KEITH SMITH,

Defendant.

-----X
RAYMOND GUZMAN, J.S.C.

The defendant plead guilty to manslaughter in the first degree (PL §125.20) in satisfaction of the captioned indictment; judgment was rendered on June 24, 1993, and the defendant was sentenced to an indeterminate prison term of 8 to 24 years (Pincus, J.). The defendant advises that he currently remains incarcerated pursuant to this sentence.

In papers dated January 15, 2007, and referred to this court for decision on April 3, 2007, the defendant *pro se* moves for an order, pursuant to CPL §390.50, directing the Department of Probation to furnish the defendant with a copy of the “pre-sentence report”(PSR) prepared in connection with the defendant’s sentencing. The defendant explains that he needs the PSR to assist in preparing an administrative appeal of the December 2006 Parole Board decision denying him parole release.

In keeping with recently-announced policy, the Department of Probation did not reply to the defendant’s motion; the Department has made the “blanket” declaration that it takes no position on inmate requests for copies of PSRs, although it strongly opposes applications to contest the accuracy of information contained therein.

For the reasons set forth below, the defendant’s motion for an order directing the

Department of Probation to provide the defendant with a copy of his pre-sentence report, **redacted as specified herein**, is granted.

The Defendant's Motion

The defendant has submitted a copy of the Parole Board's "Release Decision Notice," dated December 13, 2006, confirming that the defendant had appeared before the Board for an interview on December 12, 2006, and stating that the decision to deny the defendant parole was reached after consideration of such interview and the defendant's record. The Board set the defendant's next appearance date for December 2008.

The Board noted that its decision was based on certain specific factors, including that the defendant's instant offense (first-degree manslaughter) "involved you beating your victim, a 71-year-old man, by repeatedly striking him in the head with a pipe wrench." The defendant asserts that it is reasonable to infer that this "reference to detailed facts" was derived from the PSR, and thereby demonstrates that the Board relied on the PSR in reaching its decision. Accordingly, the defendant contends, he has "met his burden of showing need for the pre-sentence report," citing *People v Liberto Delatorre*, 12/4/03, NYLJ, p.19, cols. 3-4 [sic].¹

The defendant also submits a copy of a letter from the Division of Parole, confirming that the defendant's notice of appeal was received on December 21, 2006, and notifying the defendant that the deadline for submitting a document perfecting such appeal is April 20, 2007.

Decision

It is well-established that a defendant has no constitutional right to obtain a copy of the

¹ *People v Delatorre*, 2 Misc.3d 385 [Westchester Co. Ct. 2003].

PSR (see, e.g., *People v Peace*, 18 NY2d 230 [1966]), but there is disagreement among the four Judicial Departments as to the extent of a defendant's statutory right to obtain a copy. In the Second Department, the view is that CPL §390.50 confers no legal right to disclosure of a PSR in connection with a collateral proceeding, and that such disclosure is within the sole discretion of the sentencing court. See *Thomas v Scully*, 131 AD2d 488 [2d Dept. 1987].

The Third Department, which agrees with the Second Department's statutory interpretation, has offered guidance on the proper exercise of such judicial discretion, opining that a PSR should be disclosed only upon a factual showing of the need therefor. See, e.g., *Matter of Gutkaiss v People*, 11 AD3d 845 [3d Dept. 2004]; *Matter of Campney v People*, 279 AD2d 882 [3d Dept. 2001]; *Matter of Blanche v People*, 193 AD2d 991 [3d Dept. 1993]. Some lower courts in the Second Department, including this court, have employed this standard. See, e.g., *People v Harris*, 187 Misc.2d 591 [Kings Co. Sup. Ct. 2001].

When considering an application to disclose a PSR report in connection with a collateral proceeding, it is also important to weigh fairness to the defendant, based on his showing of need for the report, against the need to protect the confidentiality of any third parties identified therein. See, e.g., *People v Joseph Johnson*, N.Y.L.J., November 29, 1998, p.31, col.4 [Kings Co. Sup. Ct., D'Emic, J.].

The defendant in the instant case has satisfactorily demonstrated his need for the PSR, by establishing a basis for inferring that the Parole Board's denial of the defendant's parole may have been partially based on information contained in his PSR. The defendant has also established that his need for the PSR is imminent; if it is to be useful to him in preparing his appeal papers [due barely more than two weeks hence], he obviously needs it soon.

Accordingly, the Department of Probation is hereby directed to (1) prepare a copy of the defendant's pre-sentence report in the captioned case, redacting therefrom the names, addresses and/or any other contact information pertaining to any person, other than the defendant himself and law enforcement officials, who are identified as the source(s) of information used in the report; and then to (2) provide the defendant with a copy of the redacted PSR as expeditiously as feasible.

In closing, this court would add that while the defendant may take the opportunity in the context of a parole proceeding to up-date, clarify, dispute and/or otherwise comment on information contained in the PSR, this court agrees with Probation that any application to correct or amend the report would be untimely; a challenge to the contents of a PSR must be raised before sentencing. See, e.g., *Antonucci v Nelson*, 298 AD2d 388 [2d Dept. 2002].

The foregoing constitutes the decision, opinion and order of the court.

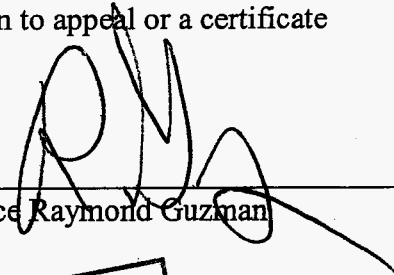
Dated: April 4, 2007
Brooklyn, New York



Raymond Guzman
Justice of the Supreme Court



The defendant is hereby advised of his right to apply to the Appellate Division, Second Department, 45 Monroe Place, Brooklyn, New York 11201, for a certificate granting leave to appeal from this determination. This application must be made within 30 days of service of this decision. Upon proof of financial inability to retain counsel and to pay the costs and expenses of such appeal, the defendant 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. See 22 NYCRR §671.5.


Justice Raymond Guzman

