

**People v Agnew**

2007 NY Slip Op 30662(U)

March 22, 2007

Supreme Court, New York County

Docket Number: 0006016/2005

Judge: Ronald A. Zweibel

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 41

-----X  
THE PEOPLE OF THE STATE OF NEW YORK, :  
 :  
 -against- :  
 :  
 GERALD AGNEW, :  
 :  
 Defendant. :  
-----X

Indictment Number 6016/05  
Decision & Order

ZWEIBEL, J.

The petitioner, Gerald Agnew, DIN 06-R 2382, requests a copy of his pre-sentence report ("PSR") pursuant to CPL 390.50. On May 11, 2006, defendant was sentenced to an indeterminate sentence of from two to four years' incarceration upon his plea of guilty to Attempted Rape in the Second Degree (Penal Law § 110/130.30). At present, petitioner is incarcerated pursuant to that sentence in the Gowanda Correctional Facility, P.O. Box 311, Gowanda, New York 14070-0311. Defendant claims he never shown his Pre-Sentence Report at the time of sentencing; that he believes that it contains unspecified "false, erroneous and misleading information;" and apparently wants to use it in connection to any appearance in front of the Parole Board.

The New York City Department of Probation, pursuant to a Memo from Martin Horn, Commissioner of Probation, dated December 19, 2006, waives its right to notice and its opportunity to be heard on all post-sentence motions brought by defendants for release of their pre-sentence reports.

This Court, as the Court which sentenced defendant, may

authorize disclosure of his pre-sentence under appropriate circumstances (see People v. Bonizio, 143 Misc. 2d 1050 [N.Y. Co. Sup. Ct. 1990]). Disclosure to defendant is clearly appropriate since the pre-sentence report is considered by the Parole Board with respect to any application by defendant for parole release and is relevant to defendant's appeal from any denial of such application (See Executive Law § 259-9). Indeed, even the Appellate Division, First Department, has acknowledged that a defendant has a "clear legal right to review the pre-sentence reports for use before the Parole Board and ... a showing of relevance is not required" (People v. Wright, 206 A.D.2d 337 [1st Dept. 1994]); CPL § 390.50.

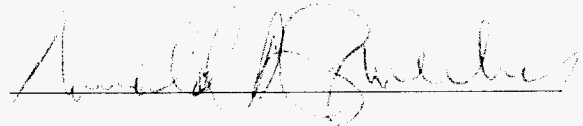
The Department of Probation is to redact the report as to any confidential information such as, but not limited to, witness names, addresses, phone numbers, social security numbers, shield numbers and tax registry identification numbers and to then forward the report, as redacted, to the defendant within 30 days of receipt of this Decision and Order.

Accordingly, the application is granted.

The Motion Clerk of the Supreme Court of the State of New York, Criminal Term, New York County, is to serve a copy of this decision and order on the defendant and the New York City Department of Probation.

This constitutes the decision and order of this court.

Enter:

A handwritten signature in cursive script, appearing to read "Ronald A. Zweibel", written over a horizontal line.

Ronald A. Zweibel, J.S.C.

Dated: March 22, 2007