

People v Gupta

2007 NY Slip Op 31062(U)

May 4, 2007

Supreme Court, Queens County

Docket Number: 0002013/2007

Judge: Barry Kron

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motion

SUPREME COURT OF THE STATE OF NEW YORK
CRIMINAL TERM: PART K-8

P R E S E N T: HON. BARRY KRON,
A.J.S.C.

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

- against-

Indictment Numbers: 2013-04
2085-06

ANKUR GUPTA,

Motion: To Dismiss

Defendant.

-----X

DEFENDANT PRO SE
For the motion

RICHARD A. BROWN, D.A.

BY: ALIX FREDRIKA KUCKER, A.D.A.
Opposed

Upon the foregoing papers, and due deliberation had, the motion is denied. See accompanying memorandum this date.

Kew Gardens, New York
Dated: May 4, 2007



BARRY KRON
A.J.S.C.

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

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

BY: BARRY KRON, A.J.S.C.

- against -

Indictment Numbers:2013-04
2085-06

ANKUR GUPTA,

Defendant.

-----X

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

By motion received on or about April 2, 2007, defendant seeks an order of the court to dismiss these Queens County indictments so that he can be deported. Defendant is currently incarcerated in New Jersey and was sentenced there on November 13, 2006 to three years incarceration based upon a guilty plea to Theft by Deception in the Third Degree (see People’s affirmation at para. 5). Defendant is currently serving this sentence. Defendant cites no legal authority to support his application for dismissal of these indictments.

In response, the People have filed an affirmation in opposition dated April 11, 2007, whereby they assert that defendant’s motion should be denied in its entirety. The People contend that defendant is not in the actual or constructive custody of this Court, and therefore is not properly present before the Court to seek the requested relief. Additionally, the People argue that defendant’s motion is without merit and he has not cited any authority to have the cases dismissed “as an exercise of the Court’s mercy.”

For the reasons stated herein, defendant’s application is denied.

PROCEDURAL HISTORY

On or about August 13, 2004, indictment number 2013-04 was filed with the court charging defendant with two counts of Grand Larceny in the Third Degree (PL § 155.35); one count of Grand Larceny in the Fourth Degree (PL § 155.30 [1]); one count of Scheme to Defraud in the First Degree (PL § 190.65[1][B]); and three counts of Issuing a Bad Check (PL § 190.05[1]). On October 26, 2005 defendant consented to the consolidation of Indictment 1420-05 charging one count of Grand Larceny in the Third Degree (PL § 155.35) and two counts of Issuing a Bad Check (PL § 190.05[1]).

On October 26, 2005, defendant pled guilty to Grand Larceny in the Third Degree with a promised sentence of five years probation and payment of restitution in the amount of \$15,834.29. The sentence was based upon certain conditions imposed by the Court, one of which was defendant's return to Court for his sentence date. On December 8, 2005, defendant failed to appear for his sentence and a bench warrant was issued for his arrest.

On September 14, 2006, Indictment 2085-06 was filed against defendant charging him with Bail Jumping in the Second Degree (PL § 215.56). Defendant has not been arraigned on the indictment.

Upon a review of the exhibits provided by defendant and representations made by the District Attorney's Office, defendant is currently serving a sentence for an offense committed in New Jersey. The sentence consists of a three year period of incarceration.

DECISION

Pursuant to Article I of the Interstate Agreement on Detainers, (hereinafter "IAD"), the states which are a party to the compact¹ have subscribed to it "to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainees based on **untried** indictments, informations or complaints" (CPL § 580.20 (emphasis added)). Thus, cooperative procedures have been implemented by this agreement to secure the

¹New York is a party to this interstate compact (See CPL § 580.20).

speedy trial of individuals already incarcerated in another jurisdiction to resolve all untried matters, as stated above. Defendant is seeking dismissal of all of the charges under the two New York Indictments.

The IAD is inapplicable under the facts of Indictment 2013-2004. Defendant has already been convicted under this indictment based upon his guilty plea. Upon completion of his New Jersey sentence, he will be returned to New York State and the warrant for his failure to appear on his scheduled sentence date will be addressed at that time. The warrant exists so that defendant can be returned to New York for the commencement of his state sentence. Thus, defendant has not asserted any grounds upon which relief can be granted (People v. Peterson, 264 A.D.2d 574(1st Dept. 1999)(defendant who has been convicted, but not yet sentenced is not “untried” within the meaning of the Agreement on Detainers). His application is denied.

With respect to Indictment 2085-2006, defendant has not established that a legal basis exists for a dismissal of the Bail Jumping charge. The People have submitted documentation that they have made a request for defendant’s transfer from New Jersey, so that he can be produced before this Court. As such, defendant’s request for dismissal of this indictment is premature.

Accordingly, defendant’s motion is denied in its entirety.

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

Kew Gardens, New York
Dated: May 4, 2007


BARRY KRON
A.J.S.C.