

**People v Flores**

2007 NY Slip Op 32426(U)

July 23, 2007

Supreme Court, Kings County

Docket Number: 0005776/2004

Judge: Patricia DiMango

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MEMORANDUM

SUPREME COURT : KINGS COUNTY  
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PEOPLE of the STATE of NEW YORK,

(Criminal Term, Part 30)

By: DI MANGO, J.

- against -

Dated: July 23, 2007

ERIK FLORES,  
Defendant.  
-----X

Indictment No. 5776/04

The defendant, *pro se*, has moved for an order granting him a copy of his pre-sentence investigation report. As a matter of policy and current practice, the New York City Department of Probation has not submitted any papers in response to this application as it takes no position regarding the release of pre-sentence reports to defendants.

In deciding this motion, the court has considered the moving papers, a letter issued by the Commissioner of Probation (on December 19, 2006) outlining the Department's policy, and the official court file.

**Discussion**

At the outset, the court observes that a defendant has no constitutional right to obtain a copy of the pre-sentence report.<sup>1</sup> However, since 1975, the Criminal Procedure Law has provided for the release of the report to the defendant under certain circumstances.

CPL 390.50 (2) contains the provisions governing the release of the contents of a pre-

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<sup>1</sup> *People v Peace*, 18 NY2d 230, 233-234 (1966), *cert. denied*, 385 U.S. 1032 (1967).

sentence report. Under CPL 390.50 (2), a pre-sentence report shall be made available to the defense for review or copying one day prior to sentencing in order to afford a defendant the opportunity at sentencing to contest any information in the probation report.<sup>2</sup>

Additionally, a defendant has a legal right to a copy of the pre-sentence report for purposes of appeal,<sup>3</sup> and, it has been held, for use before the parole board.<sup>4</sup> Nevertheless, a bare assertion that the applicant needs a copy of the pre-sentence investigation report to prepare for his/her appearance before the Board of Parole is insufficient without specifying when the parole hearing is scheduled.<sup>5</sup>

Here, the defendant states that he seeks a copy of the pre-sentence report “and other related memoranda submitted in connection with [this] criminal proceeding” in order to prepare for his upcoming parole hearing, scheduled to take place in September, 2007. (The defendant has submitted proof of his September, 2007 Parole hearing.) Further, the defendant has indicated that he herein consents to any necessary redactions of information to which he may not be entitled, such as the addresses and telephone numbers of victims or witnesses.

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<sup>2</sup> *People v Rogers*, 54 AD2d 616, 617 (1976); *People v Ferrara*, 91 Misc2d 450, 451-452 (1977).

<sup>3</sup> CPL 390.50 [2]; *Matter of Legal Aid Bur. v Armer*, 74 AD2d 737 (1980); *Rogers*, *supra*, 54 AD2d at 617-618.

<sup>4</sup> *People v Wright*, 206 AD2d 337, 338 (1994), *lv. denied*, 84 NY2d 873; *Matter of Legal Aid Bur. v Armer*, *supra*, 74 AD2d at 737.

<sup>5</sup> *Matter of Kilgore v People*, 274 AD2d 636, 636 (2000); *see also*, *Matter of Gutkaiss v People*, 11 AD3d 845 (2004).

Insofar as the defendant has demonstrated that he has an upcoming scheduled appointment to appear before the Parole Board, this court concludes that the defendant's application shall be granted and he should be provided with a copy of his pre-sentence report sufficiently in advance of his appointment date so as to assist him in his preparation therefor.

Since this court is unaware of the existence of any other memoranda submitted to the court to assist it in sentencing in this case, this court is not in a position to direct the disclosure of same, particularly without knowing the nature and content of any such possible memorandum or report. Thus, this aspect of the defendant's application is denied, with leave given to the defendant to renew his application for same, upon a proper showing of the existence and need for any such other memorandum or report.


With regard to any potential necessary redactions, this court respectfully requests that, prior to releasing the pre-sentence report herein, an appropriate member of the staff of the Department of Probation review the defendant's report to ascertain whether it contains any confidential information or other matter which should not be disclosed to the defendant. If the Probation official determines, in the exercise of his/her judgment and discretion, that such matter is contained in the report, this court hereby authorizes such individual to make the appropriate necessary redactions on behalf of the court and to forward a copy of the report, as redacted (if necessary), directly to the defendant.

Furthermore, in the event the Department of Probation is in possession of any additional memoranda, as herein referenced by the defendant, and deems same appropriate for disclosure to the defendant, it may do so, after making any necessary and appropriate

redactions of matter which should not be disclosed to the defendant, without the necessity of the defendant seeking leave to renew the instant application.

The foregoing constitutes the decision and order of the court.

E N T E R ,



J. S. C.

RON. PATRICIA M. DIMANGO

**ENTERED**  
AUG - 2 2007  
NANCY T. SUNSHINE  
COUNTY CLERK