

People v Tucker

2007 NY Slip Op 32980(U)

August 15, 2007

Supreme Court, Suffolk County

Docket Number: 0001956/1978

Judge: James F.X. Doyle

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COUNTY COURT, SUFFOLK COUNTY
STATE OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK,

JAMES F.X. DOYLE, J.C.C.

v.

Indictment No. 1956-78

Dated: August 15, 2007

ROLAND TUCKER,

Defendant.

-----X

HON. THOMAS J. SPOTA
District Attorney of Suffolk County
By: ANNE E. OH, ESQ.
Criminal Courts Building
210 Center Drive
Riverhead, New York 11901

ROLAND TUCKER
Pro Se Defendant
Mid-Orange Correctional Facility
900 Kings Highway
Warwick, New York 10990
DIN #: 82A5222

Upon the following papers numbered 1 to 2 read on this motion for an order sealing the records of his arrest and prosecution; moving papers 1; Affidavit in Opposition 2.

Based upon the foregoing papers, it is hereby

ORDERED that defendant's motion is denied in its entirety.

Defendant, currently incarcerated at Mid -Orange Correctional Facility, has filed a *pro se* motion pursuant to CPL § 160.55 seeking the sealing of records and return of all photographs and fingerprints associated with his arrest on July 23, 1978 charging him with Burglary in the Third Degree and Criminal Trespass in the Third Degree. On July 23, 1979, the charges against the defendant were dismissed. While the prosecutor erroneously contends that the record was sealed in the instant matter, they nonetheless assert in opposition that the defendant's motion should be dismissed as moot.

Review of the documents contained within the official court file relative to the instant matter reveal an order pursuant to CPL §160.50 sealing the record and providing for the return of photographs and fingerprints dated July 15, 1980 (Seidell, J.). However, on July 24, 1980, the Hon. Harry E. Seidell issued an order vacating its prior determination rendered on July 15, 1980. The July 24, 1980 order provided in pertinent part that the "defendant's criminal action or proceeding was not terminated in his favor, to wit: on July 23, 1979 the said Indictment was superseded by Superior Court Information W-1721-79 at which time the defendant plead guilty and was sentenced to an Unconditional Discharge. dismissed on 2-15-83."¹

¹ Copies of the July 15, 1980 and July 24, 1980 decisions of the Hon. Harry E. Seidell are supplied herewith.

The court's review of the purposes of CPL §160.50 and its legislative history reveals that the right to have records sealed is not one of constitutional dimension, but exists by virtue of the statute only. In essence, CPL §160.50 was created, along with certain other laws enacted at the same time, as "part of an over-all legislative package designed to protect the rights of individuals against whom criminal charges have been brought, but which did not ultimately result in a conviction (*People v. Patterson*, 78 NY2d 711).

To come within the ambit of CPL §160.50, the action must have terminated in favor of the accused. To meet that definition, the criminal action must have concluded as described in section (3) of 160.50, which specifically lists the circumstances under which the action will be sealed. In the case at bar, there is an order of the court making a specific finding that the action was not terminated in favor of the defendant.

Thus, where as here, the dismissal of the subject indictment was not the result of one of the occurrences listed in CPL §160.50 (3), but was a dismissal in satisfaction of a plea and sentence under another accusatory instrument, the record of the dismissed case need not be sealed pursuant to CPL§160.50 (*People v. Scheyler*, 192 Misc. 2d 113, 2002 NY Slip Op. 122, 123 [NY City Ct. 2002]).

Accordingly, the defendant's application for the sealing of the records and return of photographs and fingerprints indicated is denied.

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

ENTER.



JAMES F.X. DOYLE, J.C.C.

2COUNTY COURT, SUFFOLK COUNTY
STATE OF NEW YORK

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

JAMES F.X. DOYLE, J.C.C.

v.

Indictment No. 258-1982

Dated: August 14, 2007

ROLAND TUCKER,

Defendant.

-----X
HON. THOMAS J. SPOTA
District Attorney of Suffolk County
By: ANNE E. OH, ESQ.
Criminal Courts Building
210 Center Drive
Riverhead, New York 11901

ROLAND TUCKER
Pro Se Defendant
Mid-Orange Correctional Facility
900 Kings Highway
Warwick, New York 10990
DIN #: 82A5222

Upon the following papers numbered 1 to 2 read on this motion for an order sealing the records of his arrest and prosecution; moving papers 1; Affidavit in Opposition 2.

Based upon the foregoing papers, it is hereby

ORDERED that defendant's motion is denied in its entirety.

Defendant, currently incarcerated at Mid -Orange Correctional Facility, has filed a *pro se* motion pursuant to CPL § 160.55 seeking the sealing of records associated with his arrest on December 8, 1981 charging him with one count of Burglary in the Third Degree. On February 15, 19982, the subject docket was dismissed pursuant to a Superior Court Indictment under W-455-83 charging the defendant with Petit Larceny. On February 15, 1982, defendant pled guilty to the charge under W-455-83 and was sentence to a term of imprisonment of 90 days (Cacciabaudo, J.).

In his "Affidavit in Support", the defendant mistakenly states that "...the criminal action was terminated in his favor, as defined in CPL Section 160.50 (2). Indictment No. 258-82 was dismissed on 2-15-83."

The court's review of the purposes of CPL §160.50 and its legislative history reveals that the right to have records sealed is not one of constitutional dimension, but exists by virtue of the statute only. In essence, CPL §160.50 was created, along with certain other laws enacted at the same time, as "part of an over-all legislative package designed to protect the rights of individuals against whom criminal charges have been brought, but which did not ultimately result in a conviction (*People v. Patterson*, 78 NY2d 711).

To come within the ambit of CPL §160.50, the action must have terminated in favor of

the accused. To meet that definition, the criminal action must have concluded as described in section (3) of 160.50, which specifically lists the circumstances under which the action will be sealed.

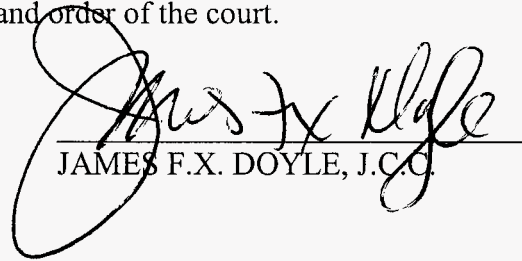
Since the right to the sealing of records (and return of the items listed therein) has been created solely by statute, and is not found within the constitution, it follows that unless the statute lists the particular circumstance for which sealing is required, the records need not be sealed.

Thus, where as here, the dismissal of the subject indictment was not the result of one of the occurrences listed in CPL §160.50 (3), but was a dismissal in satisfaction of a plea and sentence under another accusatory instrument, the record of the dismissed case need not be sealed pursuant to CPL§160.50 (*People v. Scheyley*, 192 Misc. 2d 113, 2002 NY Slip Op. 122, 123 [NY City Ct. 2002]).

Accordingly, the defendant's application for the sealing of the records indicated is denied.

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

ENTER.



JAMES F.X. DOYLE, J.C.C.