

People v Pereira

2007 NY Slip Op 34152(U)

December 11, 2007

Supreme Court, Kings County

Docket Number: 0002709/2004

Judge: Patricia DiMango

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MEMORANDUM

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

- against -

ALFREDO PEREIRA,

Defendant.

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(Criminal Term, Part 30)

By: DI MANGO, J.

Dated: December 11, 2007

Indictment No. 2709/2004

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 and the official court file, and further takes notice of a letter issued by the Commissioner of Probation (on December 19, 2006) outlining the Department's policy not to object to the release of such reports¹. The court herein determines that the motion should be granted in substance.

Discussion

Since 1975, the Criminal Procedure Law has provided for the release of the pre-sentence investigation report to the defendant under certain circumstances. CPL 390.50 (2)

¹ Nevertheless, this court observes that, in the past, the Department would routinely note that a defendant was not necessarily entitled to an *unredacted* copy of the pre-sentence report.

contains the provisions which govern the disclosure of the contents of a pre-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.²

Additionally, a defendant has a legal right to a copy of the pre-sentence report for purposes of appeal,³ and, it has been held, for use before the parole board.⁴ 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 demonstrating that a parole hearing is scheduled.⁵

Here, the defendant requests that a “true and exact copy” of his Pre-Sentence Investigation Report be provided to him, which report had been prepared for and used upon his sentencing which took place on January 6, 2005, with regard to his plea of guilty to Criminal Possession of a Weapon in the Third Degree on June 4, 2004. In support of his application, the defendant asserts that, while his attorney had reviewed his report at the time

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

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

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

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

of sentencing, he, the defendant himself, did not read the report and was not afforded the opportunity to do so. The defendant alleges that he now wishes to have this report in order to prepare for an upcoming appearance before the Board of Parole, scheduled for May, 2008 (and has attached proof that his Parole hearing will take place some time in May of 2008).

In light of the defendant's demonstration of an impending appearance before the Parole Board and his legal entitlement to his pre-sentence report in preparation of his upcoming Parole hearing, this court determines that the defendant's application shall be granted.

However, the court hastens to note that the statute specifically states that the court may except from disclosure certain portions of the report which may not be revealed on promise of confidentiality or, which in the interest of justice should not be disclosed⁶. Among such matter which need not and should not be disclosed to a defendant is confidential information such as the addresses and telephone numbers of victims or witnesses.

Since the court is not in possession of this defendant's report and is unaware of whether it contains any sort of information to which the defendant may not be entitled (or which might otherwise be inappropriate to reveal), and further finds the Department of Probation equally, if not better, equipped to review the report for required redactions, the court respectfully requests that an appropriate member of the staff of the Department of Probation delete from the defendant's report whatever matter, if any, he/she finds pursuant

⁶ See, CPL 390.50(2)(a).

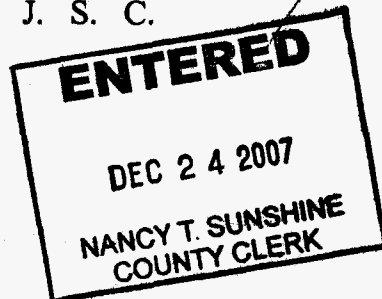
to the statute⁷ should not be disclosed to him, prior to releasing same directly to him. In particular, the court directs that all confidential matter, including, but not limited to the addresses and telephone numbers of victims and witnesses, be redacted from the report.

Accordingly, it is hereby ordered that the Department of Probation shall provide to the defendant a copy of the defendant's pre-sentence report which contains all necessary redactions. Such report shall be sent to the defendant sufficiently in advance of his appointment date, but no later than April 1, 2008, so as to afford him an adequate opportunity to use his report in preparation for his Parole Board appearance.

The foregoing constitutes the decision and order of the court.

E N T E R ,

J. S. C.



⁷ In the event any dispute or question should arise as to the necessity or propriety of any redactions of the report, such issue shall be referred to this court for resolution; otherwise the Department of Probation shall handle the release of the pre-sentence report to the defendant.