

People v Taylor

2008 NY Slip Op 30900(U)

March 24, 2008

Supreme Court, Kings County

Docket Number: 0007120/2007

Judge: William E. Garnett

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: APF-1

THE PEOPLE OF THE STATE OF NEW YORK

-against-

James Taylor a/k/a,
Anpu Unnefer Amen

Defendant.

DECISION AND ORDER

SCI #7120-2007

Date: March 24, 2008

By: Hon. William E. Garnett

On July 27, 2007, the defendant pled guilty to Robbery in the Third Degree. On August 13, 2007, the defendant was sentenced, as a second felony offender, to 2 to 4 years in state prison. A \$250 mandatory surcharge, a \$20 Crime Victim Assistance fee and a \$50 DNA databank fee were imposed.

The defendant moves, pro se, pursuant to CPL §420.40 to defer payment of the aforementioned surcharges. The defendant, who has effectuated a legal name change from James Taylor to Anpu Unnefer Amen, also moves to have an amended commitment sent to the New York State Department of Corrections reflecting his name change.

In support of his motion to defer the surcharges, the defendant avers, in a sworn affidavit, that he is unable to pay the surcharges as he is indigent, his prison account balance is \$11.00, he makes approximately \$10.00 in biweekly prison wages, has no other assets, including real estate or other personal property

and his family cannot help him pay the surcharges.¹ The defendant further asserts that his prison wages are insufficient to purchase necessary cosmetic items and thus to have all or part of his wages taken to pay the surcharges would work an undue hardship on him.

Deferment of the Mandatory Surcharges and Fees

While there is no explicit statutory authority in CPL §420.40 and PL §60.35 for deferring payment of the surcharge and fees of a defendant imprisoned in excess of 60 days, appellate courts have concluded that trial courts have implicit authority under CPL §420.40 to defer payment in accordance with the standards set forth in subdivision 2 of that section. People v. Kistner, 291 AD2d 856 (4th Dept. 2002); People v. Abdus-Samad, 274 AD2d 666 (3rd Dept. 2000); See also, People v Pierce, 16 Misc3d 1126(A) (Sup. Ct., NY CO. 2007); People v. Hazel, 13 Misc3d 728 (Sup. Ct., Bronx Co. 2006).

Deferment is not had for the asking. A defendant is required by CPL §420.40(2) to provide the court with "credible and verifiable information" that, due to his indigency, the payment of the surcharge would work an unreasonable hardship on him or his immediate family. People v. Kistner, supra at 856; People v. Abdus-

¹The defendant has also submitted in support of his motion a copy of his Correctional Facility Inmate Statement for the Period of 1/1/08 - 1/31/08.

Samad, supra at 666-667; People v Pierce, supra; People v. Parker, 183 Misc2d 737 (Sup. Ct., Kings Co. 2000).

In People v. Parker, supra, the defendant, in support of his motion to defer payment, asserted that "he had been homeless since 1992 and that he [was] presently having 40% of his biweekly earnings of \$6.40 deducted to cover, in equal measure, his mandatory surcharge and the "gate fees" (monies to be paid to him upon release) leaving him with only \$3.70 to purchase incidentals." The Court held that since the defendant's basic needs, i.e. food, lodging, hygienic supplies and clothing, were provided by the penal institution, the defendant had not asserted facts sufficient to warrant the relief sought. The Court explained that the defendant had not distinguished his situation from that of any other inmate who was unemployed prior to his incarceration and who had no family or friends to give him extra money while incarcerated. Moreover, the Court noted that the defendant had not demonstrated that he was responsible for supporting an immediate family member who had been adversely affected by the deductions from his prison earnings.

In this case, the sole allegations in support of the motion are that the defendant is unable to pay the surcharges because he is indigent, earns only \$10.00 in biweekly prison wages and has no other sources of income. Thus, the defendant has failed to provide credible and verifiable information to establish that the collection of the mandatory surcharges and other assessments would

work an unreasonable hardship on him over and above the ordinary hardships inherent in incarceration and suffered by other indigent inmates. Moreover, the defendant has not demonstrated that he is responsible for supporting an immediate family member who has been adversely affected by the deductions from his prison earnings.

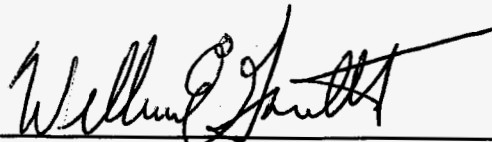
The defendant's assertion that he cannot afford to purchase necessary cosmetic items because he does not earn enough in prison wages and/ or he would unduly suffer if his wages were reduced to pay the surcharges is belied by the fact that he admittedly has \$11.00 in his prison account. This \$11.00 represents money from which he can purchase those needed cosmetic items.

Accordingly, based on the record before this court, the defendant's motion to defer the mandatory surcharges is denied.

With respect to the motion to amend the commitment, upon reviewing the Civil Court Kings County's Order, Index #501019, granting the defendant leave to change his name to Anpu Unnefer Amen and inspecting the related documents, the court directs the clerk to amend the commitment to reflect the defendant's legal name change and send the amended commitment to the New York State Department of Corrections.

This opinion shall constitute the decision and order of the Court.

Dated: March 24, 2008
Brooklyn, New York



William E. Garnett
Acting Justice of the Supreme Court

HON. WILLIAM GARNETT

