

**People v Sabino**

2010 NY Slip Op 31291(U)

May 4, 2010

Sup Ct, Kings County

Docket Number: 9556-2005

Judge: William E. Garnett

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: CRIMINAL TERM, PART MISC

THE PEOPLE OF THE STATE OF NEW YORK  
  
-against-  
  
SAUL SABINO,  
  
Defendant.

DECISION AND ORDER  
  
Ind. #9556-2005  
2825-2006  
7594-2006  
  
Date: May 4, 2010  
  
By: Hon. William E. Garnett

On February 22, 2008, the defendant was sentenced, after guilty pleas, to concurrent terms of seven years on Ind. #9556-2005 for Robbery in the First Degree, two years on Ind. #2825-2006 for Criminal Possession of a Weapon in the Third Degree and one year on Ind. #7594-2006 for Grand Larceny in the Fourth Degree. Eight hundred sixty (860) dollars in fees were imposed, i.e, three mandatory surcharges, three crime victim assistance fees and two DNA databank fees on these judgments.<sup>1</sup>

By decision and order, dated March 19, 2009, Justice Konviser denied the defendant's pro se motion, pursuant to CPL §420.40, to defer the mandatory surcharges.

The defendant now moves pro se for "reconsideration" of his prior motion to defer the payment of all of the surcharges. In the

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<sup>1</sup>With respect to Ind. #9556-2005, a \$250 mandatory surcharge, a \$20 Crime Victim Assistance fee and a \$50 DNA databank fee were imposed. With respect to 2825-2006, a \$200 mandatory surcharge and a \$20 Crime Victim Assistance fee were imposed. With respect to Ind. #7594-2006, a \$250 mandatory surcharge, a \$20 Crime Victim Assistance fee and a \$50 DNA databank fee were imposed.

alternative, the defendant seeks deferral of, at the very least, two of the mandatory surcharges and one of the DNA databank fees.

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 in that he makes approximately \$2.37 a week in prison wages, he has no outside income and that he does not receive any outside money to help pay the surcharges. The defendant further asserts that his prison wages, after the fees are deducted, are insufficient to purchase necessary hygiene products and postage so that he can keep in touch with his family. The defendant claims that having more than one surcharge to pay creates an undue and unreasonable hardship above and beyond the hardship of other prisoners who have only one surcharge and who are indigent.

As Justice Konviser is no longer sitting in Brooklyn Supreme Court, this case has been assigned to this Court. Instead of reviewing this as an application for reconsideration or reargument, this Court will review the application de novo.

#### 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 a surcharge and fees of a defendant imprisoned in excess of sixty (60) days, the Appellate Division, Fourth Department has 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. Camacho, 4 AD3d 862 (4<sup>th</sup> Dept. 2004); People v. Kistner, 291 AD2d 856 (4<sup>th</sup> Dept. 2002); See also, People v. Pierce, 16 Misc3d 1126(A) (Sup. Ct., NY Co. 2007). In the absence of contrary authority by the Court of Appeals or the Appellate Division, Second Department, this Court is bound to follow the rulings of the Appellate Division, Fourth Department. Mountainview Coach Lines v. Storm, 102 AD2d 663, 664-665 (2d Dept. 1984).

Deferment is not had for the mere 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-Samad, 274 AD2d 666, 666-667 (3rd Dept. 2000); People v. Pierce, supra; People v. Parker, 183 Misc2d 737 (Sup. Ct., Kings Co. 2000).

In People v. Parker, supra at 738, 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 members 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 impacted by the deductions from his prison earnings.

In this case, the defendant alleges that he is unable to pay the surcharges because he is indigent. Yet, 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. Moreover, the defendant's assertion that he cannot afford to purchase additional, necessary hygienic items and postage is undermined by the fact that he receives, at the very least, \$2.37 every week in prison wages. In fact, the Inmate Statement for the period of January 30, 2010 through February 17, 2010, attached to his motion papers, indicates that he receives \$2.37 and \$2.63 for a total of \$5.00 as prison wages each week. Even after the surcharges are deducted, the remaining amount is a source from which he can purchase the additional items he requires.

Finally, the defendant's economic condition is not unlike any other indigent defendant who has had multiple surcharges imposed on him. Thus, the defendant has failed to provide credible and verifiable information to establish, that the collection of the

mandatory surcharges and other assessments, work an unreasonable hardship on him over and above the ordinary hardships inherent in incarceration and suffered by other similarly-situated inmates.

The defendant has incurred three surcharges and related assessments because he pleaded guilty to three separate and distinct felonies. The sentencing court, as a matter of law, was required to impose these fees.

The defendant has not demonstrated his entitlement to any deferral. Accordingly, based on the record before this Court, the defendant's motion to defer the mandatory surcharges and other fees is denied.

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

Dated: May 4, 2010  
Brooklyn, New York



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William E. Garnett  
Acting Justice of the Supreme Court

