

People v Cooper

2010 NY Slip Op 33416(U)

May 12, 2010

Supreme Court, Kings County

Docket Number: 0001848/2007

Judge: Patricia DiMango

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MEMORANDUM

SUPREME COURT : KINGS COUNTY

(Criminal Term, Part PD-85)

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PEOPLE of the STATE of NEW YORK,

By: DI MANGO, J.

- against -

Dated: May 12, 2010

CARL COOPER,

Indictment No. 1848/2007

Defendant.

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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.

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.

CPL 390.50 (2) (a) contains the provisions which govern the disclosure of the contents of a pre-sentence report to a defendant. Under this statute, a pre-sentence report shall be made available to the defense for its examination prior to sentencing.

Additionally, a defendant has a legal right to a copy of the pre-sentence report for purposes of appeal,² and, it has been held, for use before the parole board.³ 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.⁴

Here, the defendant requests that be furnished with a copy of his Pre-Sentence Investigation Report, which report had been prepared for and used upon his sentencing which took place on March 16, 2009⁵.

In support of his application, the defendant indicates that he requires his probation report in order to prepare for an upcoming parole board interview and current parole appeal,

² CPL 390.50 [2] [a]; *Matter of Legal Aid Bur. v Armer*, 74 AD2d 737 (1980); *People v Rogers*, 54 AD2d 616, 617-618 (1976).

³ *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.

⁴ *Matter of Kilgore v People*, 274 AD2d 636, 636 (2000); *see also*, *Matter of Gutkaiss v People*, 11 AD3d 845 (2004).

⁵ In his papers, the defendant indicates that the report was prepared in July of 2007. The defendant is mistaken. While Mr. Cooper originally pled guilty to Burglary in the Third Degree in April of 2007 in connection with a drug treatment program plea offer, he ultimately did not successfully complete the treatment program and was subsequently sentenced to a period of incarceration on March 16, 2009. Thus, his pre-sentence report was prepared in March of 2009.

in addition to possibly using it in connection with a post-judgment motion to be filed. Accordingly, he requests that the Department of Probation be directed to supply him with a copy of same.

Prior to discussing this application, the court wishes to address, briefly, other matters raised by the defendant. In these motion papers, the defendant also reiterates a prior complaint and inquiry he made regarding certain moneys he believed were due him by his former drug treatment program. Specifically, the defendant claims that Social Security funds were improperly taken or withheld from him by the program. Additionally, Mr. Cooper asks that he be furnished with a copy of the drug treatment contract for the residential drug treatment program he had attended, prior to his current incarceration. In response to the first of these two issues, this court had requested that Ms. Davis of T.A.S.C. look into the matter and provide the defendant with whatever information she had obtained pertaining to the handling of his Social Security funds. Thereafter, Ms. Davis informed the court that she did contact the defendant and advised him that he needed to take up the matter directly with the Social Security Administration. As for providing the defendant with a copy of his original drug treatment contract, this court is not in a position to do so, as there is no copy of these papers in the official court file. The defendant may, of course, correspond with T.A.S.C. in order to obtain his contract from it.

Turning to the primary request herein, that the defendant be provided with his probation report, this court determines that it should be granted. According to the public website maintained by the New York State Department of Correctional Services, it appears

that the defendant had a recent Parole Board hearing, and has another one coming up in late summer of this year. The defendant is, therefore, entitled to have a copy of his report in connection with such appearance⁶ and for any possible parole appeals he may wish to pursue.

The court hastens to note, however, 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 disclosed⁷. 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 to the statute⁸ 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.

⁶ See generally, *Matter of Gutkaiss v People*, 49 AD3d 979, 979-980 (2008).

⁷ See, CPL 390.50(2)(a).

⁸ 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 directly handle the release of the pre-sentence report to the defendant.

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 report, however, shall contain whatever redactions, if any, Probation deems necessary and appropriate. Such report shall be sent directly to the defendant in a reasonably prompt manner.

The foregoing constitutes the decision and order of the court.

E N T E R ,



J. S. C.

HON. PATRICIA M. DIMANGO

ENTERED
MAY 18 2010
NANCY T. SUNSHINE
COUNTY CLERK