

People v Tevault

2010 NY Slip Op 33620(U)

July 19, 2010

Sup Ct, Kings County

Docket Number: 12429-1994

Judge: William E. Garnett

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authorization of the court." Matter of Thomas v. Scully, 131 A.D.2d 488 (2d Dept. 1987).

A defendant has no constitutional right to a copy of the pre-sentence report. People v. Peace, 18 N.Y.2d 230 (1966). A defendant does, however, have a statutory right to review or obtain a copy of the pre-sentence report prior to sentencing and for the purposes of appeal. CPL §390.50(2)(a).

Pursuant to CPL §390.50(1), a court, in the exercise of its discretion, may permit the disclosure of a pre-sentence report for a collateral proceeding if the defendant makes a proper factual showing of need. Matter of Allen v. People, 243 A.D.2d 1039 (3rd Dept. 1997) Matter of Shader v. People, 233 A.D.2d 717 (3rd Dept. 1996); Matter of Kilgore v. People, 274 A.D.2d 636 (3rd Dept. 2000); People v. Zarzuela, 11 Misc.3d 1076[A] (Sup. Ct., Queens Co. 2006); People v. Peete, 4 Misc.3d 597 (Sup. Ct., Queens Co. 2004); People v. Delatorre, 2 Misc.3d 385 (County Ct., Westchester Co. 2003).

A court may authorize disclosure of the pre-sentence report in connection with the preparation of an appeal of a Parole Board decision when there is "[some] 'indication in the record' that the Parole Board actually considered the presentence report in rendering its decision." People v. Delattore, supra at 387, quoting Matter of Allen v. People, supra at 1040.

In the Matter of Allen v. People, supra, the defendant's application for parole release had been denied. Before submitting

his administrative appeal of the Board's decision, the defendant requested a copy of the pre-sentence report which he contended was utilized by the Board in denying his request for parole. The Appellate Division held that the mere fact that the report may have been the basis for the Board's denial of the defendant's parole application was insufficient to warrant release of the pre-sentence report. The Appellate Division explained that the County Court did not err in denying the defendant's request as there was "no indication in the record that the Board considered the presentence report in rendering its decision." Allen v. People, supra at 1040. Cf. People v. Delatorre, supra (Defendant's statement that he needed the pre-sentence report in connection with an appeal of an adverse determination by the Parole Board coupled with a review of the Parole Board decision was deemed a sufficient showing as it could be inferred from the Parole Board decision that the Board had relied upon information contained in the pre-sentence report).

The defendant asserts that he needs a copy of the pre-sentence report in order to challenge the Parole Board's decision denying him parole release. The defendant has failed to provide "[some] indication" that the Parole Board actually considered the pre-sentence report when it denied him parole. Thus, the defendant's motion to obtain a copy of his pre-sentence report on the ground that he needs it to challenge his 2009 denial of parole release is denied.

The defendant also moves to obtain a copy of his pre-sentence

report on the ground that he needs it to prepare for his appearance before the Parole Board in June of 2011.


A bare assertion that the defendant needs the report to prepare for an appearance before the Parole Board is insufficient. The defendant has to demonstrate, at the very least, that he has been given notice of an impending hearing before the Board to warrant disclosure of the report. Matter of Kilgore v. People, supra; People v. Harris, 187 Misc.2d 591 (Sup. Ct., Kings Co. 2001) (defendant merely stated that he would be appearing shortly before the Parole Board - held to be an insufficient showing).

The Court has confirmed that the defendant is, in fact, scheduled to appear before the Parole Board at the Arthur Kill Correctional Facility in June of 2011.

In light of this information and to avoid further motion practice on this issue, the defendant's motion for release of his pre-sentence report and any medical, psychiatric, or social agency reports attached to the pre-sentence report is granted to the extent that the Department of Probation is directed to send a redacted copy of the report and any attachments to the defendant by May 1, 2011. Prior to sending the report and any attachments, the Department of Probation is directed to redact any and all confidential materials including, but not limited to, names, addresses and telephone numbers. People v. Shader, supra; People v. Delattore, supra; People v. Peetz, supra.

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

Dated: July 19, 2010
Brooklyn, New York



William E. Garnett
Acting Supreme Court Justice

ENTERED
JUL 20 2010
NANCY T. SUNSHINE
COUNTY CLERK