

People v Grant

2010 NY Slip Op 33701(U)

June 29, 2010

Supreme Court, Kings County

Docket Number: 10284/2008

Judge: Patricia DiMango

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, CRIMINAL TERM: PART PD85

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THE PEOPLE OF THE STATE OF NEW YORK :
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 -against- :
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 LOUIS GRANT, :
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 Defendant. :
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DECISION AND ORDER

Indictment No. 10284/2008
& Indictment No. 12643/2008

HON. PATRICIA M. Di MANGO:

The defendant, moving pro se, is seeking a “Financial Hardship Hearing” in connection with his application for an order, pursuant to CPL § 420.40, permitting him to defer payment of the mandatory surcharges (and other fees) imposed upon him at the time of sentencing under the two captioned indictments. The People have opposed this application.

In deciding this motion, the court has considered the defendant’s moving papers, the People’s opposition, and has reviewed the official court files.

Under Indictment No. 10284/2008, the defendant and a co-defendant originally stood charged with various counts of attempted robbery, attempted larceny, and assault and menacing. Mr. Grant was also charged, under Indictment No. 12643/2008, with acting in concert with others in the commission of Robbery in the Second and Third Degrees, as well as with other counts of assault and larceny.

However, following plea negotiations, on January 30, 2009, the defendant ultimately entered a plea of guilty to Attempted Robbery in the Second Degree in full satisfaction of Indictment No. 10284/2008, in exchange for a promised sentence of five years' incarceration (and five years' post-release supervision), and entered another plea of guilty to Attempted Robbery in the Second Degree under Indictment No. 12643/2008 upon a sentence promise of five years' incarceration (with five years' post-release supervision), with both sentences to run concurrently with one another.

The defendant was thereafter sentenced, on April 16, 2009, to the promised terms under each indictment. A Mandatory Surcharge of \$300, a DNA fee of \$50, and a \$25 Crime Victim Assistance Fee were also imposed against him under each indictment upon sentencing,

for a net total of \$750.00¹ in such fees and surcharges. Payments towards all of these fees are apparently being presently collected from inmate funds, presumably in the ordinary manner and at the usual rate.²

In his sworn, form affidavit submitted in support of his request for a "Financial Hardship Hearing," the defendant stated that, due to his incarceration and lack of employment, he is unable to pay the surcharges (and other fees), and thus he is requesting such a hearing in connection with his application for deferral³ of these charges, in whole or in part. In this affidavit the defendant also indicated that he was presently earning nothing⁴ in prison wages.

(This was the extent of the defendant's submissions and averments.)

The People have opposed the defendant's motion on the ground that he provided no compelling reason to defer payment of the mandatory surcharges (and related fees), and that he failed to substantiate any allegations of unreasonable hardship upon himself or his immediate family.

As for the defendant's claim that he was not currently earning wages while incarcerated, the People indicated that this was because he was then in New York City custody, not State custody. This, they maintained, was not sufficient to support a claim of "undue hardship" upon either the defendant or his immediate family. The People additionally contended that, as was the case with all inmates, Mr. Grant was regularly provided with items deemed necessary to maintain proper standards of hygiene, as well as with stationery supplies such as pens, paper, envelopes, and postage.

¹ The defendant mistakenly indicates that this amount is \$720 and he has provided an incorrect sentencing date in his papers. These discrepancies are immaterial.

² It is apparently the policy of the Department of Correctional Services to deduct 20% from an inmate's earnings, and 50% from funds given to the inmate from family and friends, and apply same towards the surcharge and fees (see, People v Hazel, 13 Misc3d 728, 730 [Sup.Ct. Bronx Co. 2006]).

³ In his prayer for relief, the defendant additionally requests, in the alternative, that the "imposition of the fine" be "dismissed." (It may be noted that no fine was here assessed against the defendant.) To the extent this constitutes an application for a waiver of his surcharge and fee obligations, the defendant does not further discuss the matter of "waiver," nor have the People addressed same.

⁴ The court would observe that when he made the instant motion the defendant was temporarily in New York City custody, not in State Department of Correctional Services custody.

Accordingly, the People urged denial of the motion due to the mandatory nature of these fees and the defendant's failure to establish that these compulsory installment payments towards these fees was working an unreasonable hardship upon himself or his family, namely, a hardship which is "over and above the ordinary hardship suffered by other indigent inmates." Moreover, the People opined that the defendant, being a habitual violent, larcenous felony offender, should not be heard to complain about the burden that these payments were causing him.

Discussion

While some courts have held to the contrary with regard to a defendant sentenced to a period of incarceration greater than 60 days (see, e.g., People v Hopkins, 185 Misc2d 312 [Kings Co. 2000]), this court is of the view that it is permissible, pursuant to CPL 420.40, to defer payment, in whole or in part, of the mandatory surcharge and other fees (see, People v Kistner, 291 AD2d 856 [4th Dept. 2002]; accord, People v Camacho, 4 AD3d 862 [4th Dept. 2004], *lv. denied*, 2 NY3d 761; People v Smith, 309 AD2d 1282, 1283 [4th Dept. 2003]; see also, People v Domin, 13 AD3d 391, 392 [2nd Dept. 2004 -- citing with approval, People v Huggins, 179 Misc2d 636, 638 (Greene County Ct. 1999)], *lv. denied*, 4 NY3d 830 [2005]; People v Pierce, 16 Misc3d 1126(A) [Sup.Ct. NY Co. 2007]).

Nevertheless, this does not mean that a defendant is entitled to deferral merely for the asking. Rather, in order to obtain deferral of the surcharge and other mandatory fees, the defendant must establish, by credible and verifiable information, that present (installment) payment of such fees would work an "unreasonable hardship on defendant over and above the ordinary hardship suffered by other indigent inmates" (Kistner, *supra*, 291 AD2d at 856; People v Rodriguez, 292 AD2d 646, 647 [3rd Dept. 2002], *lv. denied*, 98 NY2d 654; People v Abdus-Samad, 274 AD2d 666, 667 [3rd Dept. 2000], *lv. denied*, 95 NY2d 862; People v Parker, 183 Misc2d 737, 738 [Sup. Court, Kings; 2000]).

Notwithstanding the defendant's alleged financial constraints, this court finds that the defendant here has failed to establish any particular hardship which is out of the ordinary and would warrant court intervention and, hence, deferment of the payment of the statutorily mandated charges.

Indeed, Mr. Grant provided no proof of his financial situation or of his lack of any current prison income, nor did he even discuss in his papers his personal situation or explain why the payment of his fees and charges was an "unreasonable hardship" on him or his immediate family. Thus, this court finds that the defendant has not met his burden to establish his personal hardship, by credible and verifiable information.

Rather, it seems that Mr. Grant is situated no differently from any other incarcerated, indigent defendant of limited means. Moreover, the defendant does not claim to have any unusual expenses or any special requirements which are not being provided to him while incarcerated.

Meanwhile, it is the court's understanding that all inmates are regularly provided with the essentials necessary for hygiene (see, People v Hazel, supra, at 730-731; People v Parker, supra, 183 Misc2d at 738) and are apparently also given stationery items and supplies, and that, therefore, it is not necessary to use inmate funds to purchase any such items.

Further, insofar as the defendant claimed to be receiving no prison income, this court believes this to have been a temporary situation which was due to the defendant's then being in New York City custody, which contention was, in any event, not documented in any way. However, now that the defendant is in State custody, apparently housed at the Five Points Correctional Facility, this court presumes that the defendant is now earning typical inmates' prison wages (see, Correction Law § 187), which will be applied towards the defendant's mandatory surcharges and fees.

Lastly, the court would note that the Criminal Procedure Law does not authorize the outright waiver of any of the mandatory surcharge, DNA databank fee, or the crime victim assistance fee⁵ for this defendant, although CPL §§ 420.40 and 420.35(1) do provide authorization for the court to defer payment of the surcharge (and these other fees) under certain conditions. Accordingly, this court is without authority to waive any of the defendant's charges and thus, to the extent deemed raised by defendant, that branch of his motion cannot be entertained and such relief must be denied to him.

In conclusion, this court finds that the defendant has not alleged the requisite "unreasonable hardship" that payment of the surcharges and other fees is imposing upon him or his immediate family, if any, as would provide a basis for deferment, or even require a hearing thereon. Therefore, the motion to defer the mandatory surcharges and other fees is, respectfully, denied, without a hearing.

The foregoing constitutes the decision and order of the court.

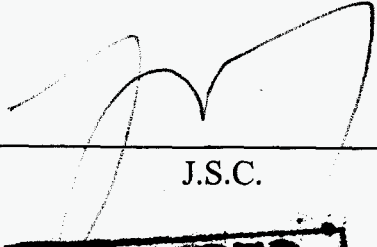
The defendant is hereby advised of his right to apply to the Appellate Division, Second Department, 45 Monroe Place, Brooklyn, New York 11201 for a certificate granting leave to appeal from this determination. This application must be made within 30 days of service of this decision. Upon proof of financial inability to retain counsel and to pay the costs and

⁵ See, CPL §§ 420.35(2) and 420.30(3); see also, People v Owens, 10 AD3d 619 [2nd Dept. 2004], lv. denied, 4 NY3d 766 [2005].

expenses of the appeal, the defendant may apply to the Appellate Division for the assignment of counsel and for leave to prosecute the appeal as a poor person and to dispense with printing. Application for poor person relief will be entertained only if and when permission to appeal or a certificate granting leave to appeal is granted. (22 NYCRR § 671.5.)

Dated: Brooklyn, New York
June 29, 2010

E N T E R ,



J.S.C.

ENTERED
JUL - 9 2010
NANCY T. SUNSHINE
COUNTY CLERK