

People v Lopez

2010 NY Slip Op 33746(U)

November 12, 2010

Sup Ct, Kings County

Docket Number: 4105/1982

Judge: William E. Garnett

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

-----X
 THE PEOPLE OF THE STATE OF NEW YORK : DECISION AND ORDER
 :
 -against- : Ind. # 4105/1982
 :
 :
 PEDRO LOPEZ, : Date: November 12, 2010
 Defendant. :
 -----X
 Hon. William E. Garnett:

On June 15, 1983, the defendant was convicted of Murder in the Second Degree (4 counts) and Criminal Possession of a Weapon in the Third Degree (3 counts) by a jury. On July 6, 1983, the defendant was sentenced to an aggregate term of fifty (50) years to life. He is presently incarcerated in the Auburn Correctional Facility.

The defendant moves, pro se, for an order permitting him to obtain a copy of his pre-sentence report. The defendant seeks to review his pre-sentence report to correct any inaccuracies or misinformation that the report might contain and for use in the preparation of "motions".

LAW

Criminal Procedure Law §390.50(1) provides that a pre-sentence report "is confidential and may not be made available to any person ... except where specifically required or permitted by statute or upon specific 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 under CPL §390.50(2) (a) to review

or obtain a copy of his pre-sentence report prior to sentencing and for purposes of appeal. By obtaining disclosure of the pre-sentence report prior to sentencing, a defendant is given an opportunity to contest and correct any inaccuracies contained in the pre-sentence report at the time of sentencing. People v. Harris, 187 Misc.2d 591, 592 (2001).

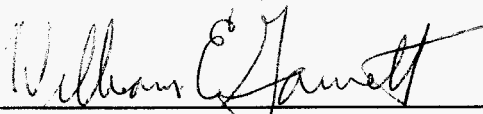
In this case, the defendant, over twenty-seven (27) years after sentencing, now seeks to review the pre-sentence report to challenge its accuracy. After a defendant is sentenced, challenges to a pre-sentence report are not permitted. Matter of Antonucci v. Nelson, 298 A.D.2d 388 (2d Dept. 2002); Matter of Sciaraffo v. New York City Dept. of Probation, 248 A.D.2d 477 (2d Dept. 1998); People v. Harris, supra. Thus, even if the Court were to order disclosure, the defendant would not be able to correct any inaccuracies.

The defendant also seeks disclosure of the report for its use in the preparation of "motions". The defendant has not identified what "motions" he intends to file. In the absence of any factual showing, there is no justification for disclosing the defendant's pre-sentence report.

Accordingly, the defendant's motion for release of his pre-sentence report is denied.

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

Dated: November 12, 2010
Brooklyn, New York



William E. Garnett
Acting Supreme Court Justice