

People v Drahcir

2011 NY Slip Op 32051(U)

July 27, 2011

Supreme Court, Kings County

Docket Number: 8112/2006

Judge: Patricia DiMango

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MEMORANDUM

SUPREME COURT : KINGS COUNTY (Criminal Term, Part 15)

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PEOPLE of the STATE of NEW YORK,

By: DI MANGO, J.

- against -

Dated: June 27, 2011

THEZARD DRAHCIR¹,

Indictment No. 8112/2006

Defendant.

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The defendant, pro se, has moved for an order granting him a free copy of the minutes of both his plea and sentencing proceedings.

In deciding the motion, the court has considered the moving papers, the People's opposition, and the official court file.

Background

By Indictment 8112/2006 the defendant was charged, along with a co-defendant, with numerous counts of robbery, kidnapping, burglary, larceny, and related offenses. On March 18, 2008, the defendant accepted a plea offer to plead guilty to the offense of Robbery in the First Degree in full satisfaction of this indictment, in exchange for a promised sentence of eight year's incarceration, to be followed by five years of post-release supervision ("PRS"). Thereafter, following various intervening proceedings,

¹ It should be noted that, throughout his papers, the defendant refers to himself as "Drahcir Thezard." As the court is not in a position to ascertain which is the defendant's forename and which, his surname, the court will use the name under which the defendant was originally charged, "Thezard Drahcir."

including a change of counsel, on April 1, 2009, sentence was imposed upon the defendant pursuant to his plea, albeit with a reduced term of incarceration, namely, seven years instead of eight years. The order of commitment reflects that the defendant was ultimately sentenced to a seven-year determinate term of imprisonment, together with five years of PRS, and the court's notes also reflect this.

Upon form motion papers, the defendant has herein requested to be provided a copy of the transcripts of his plea and sentencing proceedings, and has asked that these minutes be provided to him without fee, as a poor person pursuant to CPLR Sections 1101 and 1102. In his attached affidavit, the defendant avers that he earns \$5.74 per week in prison wages, and that this is his sole income, and further, that he owns no property and has no other assets or savings. Other than his affidavit, the defendant has provided no other documentation of his financial status.

Regarding his need for these transcripts, the defendant states in his supporting affidavit that he requires these documents in order to pursue "some post-conviction remedies." Beyond this, the defendant has not particularized his request for the minutes of these proceedings or specified the relief he intends to pursue.

The People oppose the defendant's application for free copies of these transcripts on the ground that there is no statutory authority for this court to grant same since this matter has been concluded and sentence imposed, and no motions or appeals are pending. Moreover, the People observe that the defendant has failed to demonstrate that the

transcript is needed for any non-frivolous collateral attack upon his conviction, and, in fact, has failed to state any claims he intends to raise or to provide any factual support for his stated need for the transcripts. Finally, the People also contend that the defendant has not provided sufficient documentation necessary to establish his indigence.

Discussion

A defendant has a constitutional right to have a free transcript in order to effectuate his right to a first appeal.² However, a defendant's right to have free transcripts is far more limited when requested for other purposes. Thus, it has been held that a defendant has no federal constitutional right to a free transcript for collateral proceedings unless the defendant can demonstrate, with factual allegations rather than mere conclusory ones, that there is a potentially meritorious claim.³

In New York, pursuant to CPLR §§ 1101, 1102, upon a proper application and requisite showing, a person may be granted "poor person" status and accordingly be entitled to free transcripts for trial or appeal purposes. However, the statute does not specify the availability of free transcripts under other circumstances. Thus, it has been held, that where sentencing minutes without cost are sought in the original trial court for

² *Griffin v Illinois*, 351 US 12, 16-20 (1956), *reh. denied*, 351 US 958 (1956).

³ *United States v MacCollom*, 426 US 317, 323-327 (1976); *Sistrunk v United States*, 992 F2d 258, 259-260 (10th Cir. 1993); *United States v Losing*, 601 F2d 351, 352-353 (8th Cir. 1979); *Crossley v United States*, 538 F2d 508, 509 (2nd Cir. 1976).

unspecified purposes other than for an appeal, the trial court has no authority to grant this relief where there is no triable action pending before the court and the court is not an appellate court⁴.

This court agrees with this reading of the statute and likewise concludes that it does not have the authority to grant the defendant here poor person status and free plea and sentencing transcripts with respect to the undeclared post-judgment relief he might pursue, as such has not been shown to constitute either an appeal or any other non-frivolous action or proceeding referenced in the statute. Further, the cases cited by the defendant do not hold to the contrary. They simply stand for the proposition that where a defendant is granted permission to proceed as a "poor person," he is also entitled to receive free trial and hearing transcripts.

In any event, even if this court had authority to grant a free transcript to this defendant for the stated use, he nevertheless would still be required to make a proper showing of his indigence⁵ and that the use of the requested minutes was for non-frivolous purposes.

Here, while he has provided his own affidavit indicating that he only earns minimal prison wages and that he has no other assets or resources, Mr. Drahcir has provided no other supporting documentation of his financial status. The People are of the

⁴ See, *People v Stroman*, 16 Misc.3d 749 [Sup.Ct. Kings Co. 2007].

⁵ See, *CPLR § 1101 (a)*; see also, *People v Yui Kong Yu*, 158 AD2d 370, 372 [1st Dept. 1990].

view that the defendant has not made an adequate, verifiable demonstration of his financial situation in order to establish that he would be entitled to obtain his plea and sentencing minutes free of charge.

Arguably, the defendant's financial averments suffice; however, they cannot be verified by this court, and it has been held that a court may require the applicant to provide additional documentation to establish his indigency⁶.

In any event, even assuming, *arguendo*, that the defendant's indigent status were sufficiently established, given his rather vague, unparticularized indication that he “need[s] to address some post-conviction remedies” and that this is why he requires these transcripts, this court finds that the defendant has not shown that the requested transcripts would be used only to pursue a non-frivolous claim. Indeed, the defendant has not stated what claim(s) he wishes to pursue, non-frivolous or otherwise.

Accordingly, the court determines that this application must be denied.

Finally, this court would further observe that there is no indication here that the defendant ever requested any transcripts from the court stenographer; and, in any event, he has not stated what the fee would be for him to obtain same, much less demonstrated that he cannot afford the applicable fee. In this regard, the court notes that the minutes sought, of plea and sentencing proceedings, are typically short and the cost therefor

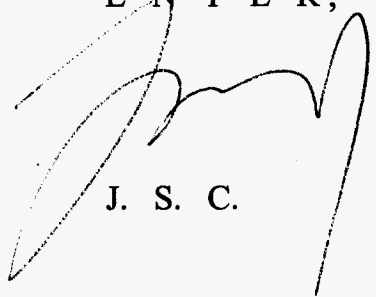
⁶ See, *People v Yui Kong Yu, supra*.

presumably minimal, and therefore quite possibly payable from the defendant's prison wages.

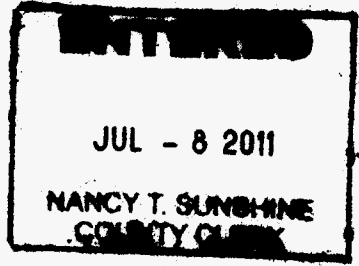
In conclusion, the motion is, respectfully, denied for all of the above reasons.

The foregoing constitutes the decision and order of the court.

E N T E R,

A handwritten signature in black ink, appearing to be 'J.S.C.', written over the printed text 'E N T E R,'.

J. S. C.

A rectangular black and white stamp with a double border. The text inside the stamp reads: 'ENTERED' at the top, 'JUL - 8 2011' in the middle, and 'NANCY T. SUNSHINE' and 'COUNTY CLERK' at the bottom.