

People v Manuel

2016 NY Slip Op 33107(U)

November 29, 2016

County Court, Wayne County

Docket Number: 16-43A

Judge: Daniel G. Barrett

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This opinion is uncorrected and not selected for official publication.

At a Term of the County Court held in and for the County of Wayne at the Hall of Justice in the Town of Lyons, New York on the 31st day of October, 2016.

PRESENT: Honorable Daniel G. Barrett
County Court Judge

STATE OF NEW YORK
COUNTY COURT COUNTY OF WAYNE

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

DECISION AND ORDER
REGARDING JUDICIAL
DIVERSION
Ind. No. 16-43A

KEVIN C. MANUEL,

Defendant

Appearances - People - ADA Christopher Bokelman, Esq.
Defendant - APD Andrew D. Correia, Esq.

The Defendant Kevin C. Manuel has been charged by Indictment 16-43 with the following : Criminal Possession of a Controlled Substance in the Third Degree, Criminal Possession of a Controlled Substance in the Fourth Degree, 2 counts of Endangering the Welfare of a Child, Criminal Nuisance in the First Degree, Criminal Nuisance in the Second Degree and Criminal Possession of a Weapon in the Fourth Degree. The Defendant is seeking to be allowed to enter a Judicial Diversion program. The District Attorney's Office has opposed that request. A CPL 216 hearing was held on the above date.

The Defendant had a substance abuse evaluation completed by Unity Health System, a qualified provider with regard to CPL 216 matters, on or about June 23, 2016. In addition the defendant's case was evaluated for participation in Monroe County Judicial Diversion by Kimberly VanCamp, the Judicial Diversion Program coordinator

for Monroe Supreme and County Courts. The Court was provided with an e-mail from Ms. VanCamp to the Public Defender's Office dated September 7, 2016. Ms. VanCamp found the Defendant eligible for the program and advised that Monroe County Would be willing to provide courtesy supervision for the Defendant, due to the fact that he resides in Monroe County. Part of the eligibility is due to the fact that the Unity Health System found the Defendant with the following assigned diagnoses: cannabis use disorder moderate; cocaine use disorder moderate; Amphetamine use disorder mild; nicotine use disorder mild.

Previously a Pre-Plea Investigation was ordered and has been reviewed by the Court and counsel. The Defendant's legal history includes the following: plea of guilty to Criminal Possession of a Controlled Substance 3rd on or about March 22, 2005, wherein the Defendant was sentenced to 1 year in State Prison, was paroled. His parole was subsequently revoked and the Defendant was re-sentenced to New York State Prison. In addition the Defendant pleaded guilty to Criminal Possession of a Controlled Substance 7th on July 24, 2006 was sentenced to time served in the Wayne County Jail. Also the Defendant pleaded guilty to Criminal Possession of a Controlled Substance 3rd on August 20, 2009 and was sentenced to 2 years in New York State Prison. He was paroled and his parole was revoked and then he was re-sentenced. His last parole expired on December 6, 2012. The charges in the current Indictment were committed on or about January 30, 2016.

After the Defendant's arraignment the Defendant was placed on Pre-Trial Release. As part of the conditions of that release he was to attend substance abuse treatment. As of the date of the hearing the Defendant had not been attending treatment as of approximately early August, 2016. Defense counsel points out that the Defendant has been working out of town knowing that eventually he will not be able to work due to incarceration or if he is placed in diversion he will not be allowed out of Monroe County. Mr. Bokelman argues that this is a further indication that the Defendant's behavior is simply criminal in nature and not a result of his substance abuse and/or addiction.

Admitted into evidence on behalf of the Defendant are Exhibits A, B and C which are copies of the Defendant's pay stubs for three weeks in October. The pay stubs indicate he works forty (40) hours a week at \$17.00 per hour. The Defendant received training in asbestos removal and his current employment is in fact an asbestos removal job in Pittsburgh.

Zachary Powell, a Wayne County Sheriff's Deputy testified. He was involved in the arrest of the Defendant. Deputy Powell had previously arrested an individual by the name of Tony Jackson who advised that he bought drugs from the Defendant. Deputy Powell passed this onto Investigator Roger LaClair.

Deputy Travis Dunn testified that after the arrest of Kevin Manuel on January 29, 2016 he transported the Defendant to the Wayne County Jail. He testified the Defendant stated he was selling crack cocaine in order to buy powder cocaine for his own personal use.

Deputy Zachary Aunkst testified. He was involved in the search of the Defendant's residence on the day he was arrested. Exhibits 3 through 5 are photographs of items in the Defendant's pockets on the day of the arrest, a scale used to weigh drugs in the kitchen and a scale with white powder on it.

Admitted into evidence is Exhibit 6 which is the Defendant's statement admitting he had been selling drugs from his friend's home. In that statement he also acknowledged that he was addicted to power cocaine for about the last six months and that he was selling crack cocaine in order to feed his addiction of power cocaine.

Admitted into evidence are Certificates of Conviction for the Defendant's plea of guilty to Criminal Possession of a Controlled Substance 3rd on March 22, 2005 and August 20, 2009.

Investigator Roger LaClair testified that he interviewed the Defendant on January 30, 2016 and reduced his statement to writing as shown by Exhibit 6. It is his opinion based upon his training and experience that the Defendant was not under the influence of drugs when he was arrested.

Mr. Bokelman argues in closing the Defendant is simply selling drugs to make money not because he is addicted. That further the Defendant has been through substance abuse treatment twice before and has been successfully discharged both times.

The Court makes the following findings:

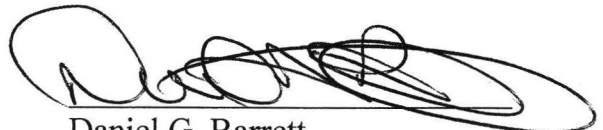
1. The Defendant is legally eligible for participation in the Diversion Program;
2. The Defendant has a history of substance abuse and dependence as shown by his criminal convictions, his participation in at least two previous substance abuse programs, his statements to the police on the day of his arrest regarding his addiction to powder cocaine as a reason he was selling crack cocaine, his substance abuse evaluation and the information provided in the pre-plea investigation;
3. That his substance abuse is a contributing factor to his criminal behavior. That is the Defendant was selling drugs in order to obtain drugs for his personal use;
4. That a Judicial Diversion Program would effectively address the Defendant's substance abuse issues and specifically would be subject to terms and conditions as set forth in the Monroe County Judicial Diversion Program. The Court notes this is an effective and closely monitored program;
5. That prison is not necessary for the protection of the public.

Although the Court is concerned that the Defendant has not participated in his substance abuse program even though recommended to do so by Unity Health at the time of his evaluation, the Court accepts, at least at this time, the Defendant's argument that he was working out of state in order to obtain money to successfully participate in the Judicial Diversion Program in Monroe County. Effectively the Defendant will not be able to work his current job and/or out of Monroe County in order to participate successfully in the recommended out patient program.

The Defendant will be required to enter into a plea and the Court shall issue a securing order allowing release of the Defendant on his own recognizance conditioning his release upon successfully following and completing the terms and conditions of the Monroe County Judicial Diversion Program, with the terms and conditions as attached in the e-mail from Kimberly VanCamp, Judicial Diversion Program Coordinator from Monroe County Court dated September 7, 2016. This Court will retain jurisdiction of the case. This Court may require the Defendant to appear in Wayne County Court at times to be determined in the future to monitor the Defendant's progress with regard to his substance abuse treatment.

This constitutes the Decision of the Court. It is hereby ordered that the Defendant is found to be eligible and allowed to participate in the Monroe County Judicial Diversion Program.

Dated: November 29, 2016
Lyons, New York



Daniel G. Barrett
County Court Judge