

People v Koegel

2022 NY Slip Op 33989(U)

November 25, 2022

City Court of Peekskill, Westchester County

Docket Number: CR-02222-20

Judge: Reginald J. Johnson

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CITY COURT: CITY OF PEEKSKILL
COUNTY OF WESTCHESTER: STATE OF NEW YORK

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PEOPLE OF THE STATE OF NEW YORK,

-against-

DECISION & ORDER
ON MOTION TO
REARGUE DECISION
AND ORDER DATED
11/18/22
CR-02222-20

RINA KOEGEL,

Defendant.

-----X

REGINALD J. JOHNSON, J.

The defendant moves, by her attorney Zev Goldstein, to reargue the Decision and Order of this Court dated 11/18/22, which denied the defendant's motion to dismiss this proceeding pursuant to the newly enacted CPL Article 245¹ and the newly amended Criminal Procedure Law (CPL) §30.30, to strike the People's Certificate of Compliance and Statement of Readiness, to compel discovery, and to waive the defendant's appearance pursuant to CPL §340.50(2), the U.S. Constitution and the N.Y. Constitution, and for such other and further relief as the Court deems appropriate. The People did not submit any opposition to prior motion.²

For the reasons that follow, the motion seeking reargument is granted and upon reargument the motion is denied as set forth therein.

¹ The relevant newly enacted CPL Article 245 became effective January 1, 2020, not the later amended version which became effective May 9, 2022.

² The Court notes that even though the People defaulted, they prevailed on the motion and are therefore not aggrieved. The People's only remedy, if for some reason they think they need to resort to one, is to move to vacate their default pursuant to CPLR 5015[a][1] (see *Kurth v. Susskind*, 200 A.D.2d 572 [2d Dept. 1994]). The People would have to demonstrate an excusable default and a meritorious claim to vacate an order entered upon default [see *Infante v. Breslin Realty Dev. Corp.*, 95 A.D.3d 1075 [2d Dept. 2012]]. The People may not reargue their default or oppose a motion to reargue same [see *Kurth v. Susskind*, 200 A.D.2d at 573-574; *Parker v. McMahon*, 53 A.D.2d 1034 (4th Dept. 1976)] The People are also precluded from appealing their default [see CPLR 5511; *Mitchell v. Morris*, 177 A.D.2d 579 [2d Dept. 1991]].

I. CPL §245.10(1)(a)(iii)

The defendant argues that the Court misapprehended or overlooked the most recent version of CPL §245.10(1)(a)(iii)³, but instead relied on the pre-amendment CPL §245.10(1)(a)(iii) in reaching its decision. The current version of CPL §245.10(1)(a)(iii) states,

Section 5. Subparagraph (iii) of paragraph (a) of subdivision 1 of section [245.10](#) of the criminal procedure law, as amended by section 1 of part HHH of chapter 56 of the laws of 2020, is amended to read as follows:

~~(iii) Notwithstanding the timelines contained in the opening paragraph of this paragraph, the prosecutor's discovery obligation under subdivision one of section 245.20 of this article shall be performed as soon as practicable, but not later than fifteen days before the trial of a simplified information charging a traffic infraction under the vehicle and traffic law, or by an information charging one or more petty offenses as defined by the municipal code of a village, town, city, or county, that do not carry a statutorily authorized sentence of imprisonment, and where the defendant stands charged before the court with no crime or offense, provided however that nothing in this subparagraph shall prevent a defendant from filing a motion for disclosure of such items and information under subdivision one of such section 245.20 of this article at an earlier date.~~

Notwithstanding the previous provisions of this section, the prosecutor's obligations shall not apply to a simplified information charging a traffic infraction under the vehicle and traffic law, or to an information charging one or more petty offenses as defined by the municipal code of a village, town, city, or county, that do not carry a statutorily authorized sentence of imprisonment, and where the defendant stands charged before the court with no crime or offense, provided however that nothing in this subparagraph shall prevent a defendant from filing a motion for disclosure of such items and information under subdivision one of section 245.20 of this article. The court shall, at the first appearance, advise the defendant of their right to file a motion for discovery.

- ([Next](#) | [Previous](#)) **Section 6.**

This act shall take effect on the thirtieth day after it shall have become a law.

³ CPL §245.10(1)(a)(iii) version effective May 9, 2022.

It is well settled that “[t]he primary consideration of the courts in interpreting a statute is to ‘ascertain and give effect to the intention of the Legislature’” [(*Riley v. County of Broome*, 95 N.Y.2d 455, 463 [2000]), quoting McKinney’s Cons Laws of NY, Book 1, Statutes §92[a]]. Generally, “the plain meaning of the statutory text is the best evidence of the legislative intent” (*People v. Cahill*, 2 N.Y.3d 14, 117 [2003]), citing *Riley*, 95 N.Y.2d at 463). In fact, “[a]s a general rule, unambiguous language of a statute is alone determinative” (*Riley*, 95 N.Y.2d at 463, citing *Matter of Washington Post Co. v. New York State Ins. Dept.*, 61 N.Y.2d 557, 565 [1984]). Here, the defendant argues that this Court should interpret the current version of CPL §245.10(1)(a)(iii) to require the People to comply therewith because the defendant is charged with a traffic infraction that carries a statutorily authorized sentence of imprisonment (Vehicle & Traffic Law (VTL) §1180-d (77/55) authorizes a period of incarceration up to 15 days).

Since VTL §1180-d authorizes a period of incarceration, the defendant argues that the People are required to complete and serve discovery as set forth in CPL §§245.10(1)(a)(ii) and 245.10(1)(a)(iii). Assuming that this Court agreed with the defendant’s statutory interpretation that the People are mandated to provide discovery pursuant to CPL §245.10(1)(a)(ii) in cases where a defendant is charged with “a traffic infraction under the vehicle and traffic law” that “carr[ies] a statutorily authorized sentence of imprisonment,” it would appear that since the defendant’s case [defendant was charged with violation of 1180-d on November 19, 2020] pre-dates the current version of CPL §245.10(1)(a)(iii), which became effective on May 9, 2022, said law does not apply to the defendant’s case, as it does not have retroactive application. “It is a fundamental canon of statutory construction that retroactive operation is not favored by the courts and statutes will not be given such construction unless the language expressly or by necessary implication requires it” (*Majewski v. Broadalbin-Perth Cent. Sch. Dist.*, 91 N.Y.2d 577, 584 [1988]); see *Jacobus v. Colgate*, 217 N.Y. 235, 240 [1916, Cardozo, J.] [“It takes a clear expression of the legislative purpose to justify a retroactive application.”])

Here, the general rule of non-retroactivity applicable to newly enacted statutes applies with equal force to amended statutes. The Court of Appeals has held that amended statutes “will in general have prospective effect only, unless its language indicates that it should receive a contrary interpretation” (*Matter of Thomas v. Bethlehem Steel Corp.*, 63 N.Y.2d 150, 154 [1984], citing McKinney’s Cons Law of NY, Book 1, Statutes, §52; see also, *Matter of Gleason [Michael Vee, Ltd.]*, 96 N.Y.2d 117, 122 [2001] [“Amendments are presumed to have prospective application unless the Legislature’s preference for retroactivity is explicitly stated or clearly indicated”]). The Court of Appeals reversed an Appellate Term’s order which held that newly amended CPL §30.30 (which added §30.30(1)(e) to include

“traffic infractions” within the meaning of “offenses”) applied retroactively and ruled that in the absence of clear legislative intent that the law be so applied, said law does not have retroactive application (*People v. Galindo*, 38 N.Y.3d 199, 206-208 [2022]). This Court cannot discern any language in the text or legislative history which “expressly or by necessary implication” requires retroactive application of the current version of CPL §245.10(1)(a)(iii) to this case. Therefore, the requirements of that section are inapplicable to these proceedings. As to the defendant’s repeated request for sanctions under pre-amended CPL §245.10(1)(a)(iii), the People are not subject to sanctions under CPL §245.80 because they have not failed to provide the defendant with discovery “not later than fifteen days before the trial of a simplified information charging a traffic infraction under the vehicle and traffic law” [pre-amendment CPL §245.10(1)(a)(iii)]. The trial in this case is presently scheduled for January 25, 2023, at 9:30 a.m.

II. Dismissal on Speedy Trial grounds pursuant to CPL §30.30(1)(d-e)

The defendant asks this Court to reconsider its denial of her request to dismiss these proceedings on speedy trial grounds, because “ [i]f traffic infractions are not included within the scope of CPL §30.30, then the entire subsection is rendered meaningless,” citing *People v. Galindo*, 38 N.Y.3d 199 [2022] (Goldstein Aff. at ¶9). Defendant further argues that “even the Appellate Term now finds that CPL §30.30(1)(e) applies to stand alone traffic infractions,” citing *People v. Harvey*, 76 Misc.3d 134(A) (App Term, 2d Dept. 2022) (Goldstein Aff. at ¶10). The defendant misapprehends the intendment of CPL §30.30(1)(d-e) and the holding in *Harvey*. CPL §30.30(1)(d-e) states that the people must be ready within 30 days of the commencement of a criminal prosecution where “the defendant is accused of one or more offenses, at least one of which is a violation and none of which is a crime,” and “for purposes of this subdivision, the term offense shall include vehicle and traffic law infractions.” The critical factor is whether the defendant is charged jointly with a traffic infraction and a higher-grade offense. If the defendant is charged only with a traffic infraction, then the speedy trial rights under CPL §30.30(1)(d-e) do not apply (see *Galindo*, 38 N.Y.3d at 204) [“the text brings traffic infractions, when charged jointly with at least one of the other listed offenses, within the scope of CPL 30.30 (1). Reading the amendment in context, the newly worded CPL 30.30(1) puts to rest any question of the legislature’s intent that the time limits specified in that provision apply to criminal actions in which a traffic infraction is jointly charged with a higher-grade offense”]. Defendant’s citation to *People v. Harvey*, *supra*, is misplaced and inapplicable to the instant proceedings, because in *Harvey*, unlike in the case at bar, the defendant was initially charged with “a single accusatory instrument with numerous misdemeanors and violations, as well as the traffic infraction of driving while ability impaired (Vehicle and Traffic Law §1192[1])”

[Id. at. pp. **1-3]. Defendant misinterprets the holding in *Harvey* to the extent that she interprets its holding to mean that CPL §30.30(1) applies in cases where the defendant is not jointly charged with a traffic infraction and a higher-grade offense. That a higher-grade offense was initially jointly charged with a traffic infraction and later dismissed is irrelevant, so long as the higher-grade offense and traffic infraction were jointly charged at some point during the proceedings. Since the defendant in these proceedings was never jointly charged with a traffic infraction and a higher-grade offense, CPL §30.30(1) does not apply to these proceedings.

Based on the aforesaid,

It is Ordered that the defendant's motion to reargue is granted and upon reargument the motion is denied.

This constitutes the Decision and Order of the Court.

Enter,

/s/ Reginald J. Johnson

Hon. Reginald J. Johnson, JCC

Dated: November 25, 2022

In deciding this motion, the Court reviewed the defendant's Notice of Motion to Reargue Decision and Order dated 11/18/22, Affirmation of Zev Goldstein, Esq., and Exhibit A.

Cc: Zev Goldstein, Esq.
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Peekskill Corporation Counsel's Office