

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 92

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

STANLEY SHEFFIELD,

Defendant.

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NUÑEZ, J.:

IND. NUMBER
4364/09

DECISION AND ORDER

The defendant, Stanley Sheffield, has requested placement in the Judicial Diversion Program, pursuant to CPL § 216. He submitted a memorandum of law outlining why he meets the criteria for eligibility. The People, on the other hand, argue that defendant is not eligible under the statute based on the nature of the instant offense.

Under CPL § 216, a defendant's eligibility for Judicial Diversion is determined by the offense(s) with which he is charged. A defendant is eligible for Judicial Diversion if he is charged with a Class B, C, D, or E felony found in Article 220 or 221 of the Penal Law, or any other specified offense listed in the statute in Penal Law §410.91(3) (emphasis supplied). These specified offenses found in Penal Law §410.91(5)¹ include and are limited to the following crimes: Burglary in the Third Degree (PL §140.20), Criminal Mischief in the Third Degree (145.05), Criminal Mischief in the Second Degree (PL §145.10), Grand Larceny in the Third Degree (PL §155.30 (1)(2)(3)(4)(5)(6)(8)(9)or(10), Grand Larceny in the Third Degree (PL § 155.35) (except involving one or more firearms, rifles, or shotguns), Unauthorized Use of a

¹Incorrectly referred to as Penal Law §410.91(4) in CPL § 216. §410.91(4) only referenced parole-eligible offenses and was repealed in 2009. Subsection (4) was replaced by §410.91 subsection (5), which lists both parole-eligible and judicial diversion-eligible offenses.

Vehicle in the Second Degree (PL §165.06), Criminal Possession of Stolen Property in the Fourth Degree (PL §165.45 (1)(2)(3)(5) or (6)), Criminal Possession of Stolen Property in the Third Degree (PL §165.50) (except involving one or more firearms, rifles, or shotguns), Forgery in the Second Degree (PL §170.10), Criminal Possession of a Forged Instrument in the Second Degree (PL §170.25), Unlawfully Using Slugs in the First Degree (PL §170.60), or an attempt to commit any of the aforementioned offenses.

In this case, the defendant is charged with one count of Grand Larceny in the Third Degree (PL §155.35) and one count of Criminal Mischief in the Second Degree (PL §145.10) which are both eligible offenses. However the indictment also charges one count of Auto Stripping in the Second Degree (PL §165.10) and one count of Criminal Possession of a Controlled Substance in the Seventh Degree (PL §220.03). He argues that inclusion of just one specified offense in the indictment makes him eligible for Judicial Diversion. He further argues that the Legislature inadvertently left out Auto Stripping as an inclusive offense for the diversion program.

The Legislature kept the scope of the Judicial Diversion statute intentionally limited in order to effectively deal with low-level participants in the drug trade who are in need of drug treatment. With this objective in mind, the statute was carefully crafted to include specific offenses to target those individuals. Unfortunately for this defendant, Auto Stripping in the Second Degree (PL §165.10) is not one of the specifically enumerated offenses set forth in the statute. This court has no basis to look behind that legislative determination and will not do so here. Moreover, it does not follow that inclusion of just one specified offense in the indictment makes the defendant eligible for Judicial Diversion. If that were so then, as the People point out

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in their response, first-time offenders charged with an A-1 non-violent felony along with a single crime specified in CPL § 216 would be eligible for Judicial Diversion. This is not what the Legislature contemplated in enacting the Judicial Diversion statute.

Based on the foregoing, the defendant is not eligible for Judicial Diversion under the present indictment. Consequently, his request to be placed in the Judicial Diversion Program is denied.

This opinion constitutes the Decision and Order of the court.

Dated: February 4, 2010
New York, New York



PATRICIA NUNEZ
Justice of the Supreme Court