JUDGES CANNOT REMAND DEFENDANTS CHARGED WITH NON-QUALIFYING OFFENSES TO CUSTODY FOR COMPETENCY EXAMINATIONS PURSUANT TO CPL ARTICLE 730

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INTRODUCTION

In *People ex rel. Molinaro v Warden, Rikers Is.*, (39 NY3d 120 [2022]), the Court of Appeals resolved an issue left open in *Matter of LaBelle* (79 NY 350 [1992]), holding that CPL 730.20 does NOT give courts, faced with the task of determining a defendant’s fitness to proceed, the authority to remand him/her for a competency exam when charged only with NON-QUALIFYING offenses (see CPL 500.10 [3-a], [3-b], 510.10[3], 530.20 [1] [a]).

The defendant in *Molinaro* was arraigned in the local criminal court on a misdemeanor complaint charging several non-qualifying offenses, but instead of being released on recognizance or upon non-monetary conditions, was remanded to Rikers Island pending a forensic examination.

The relator brought a petition for Writ of Habeas in Supreme Court, arguing that the defendant was entitled to be released from custody because he was not charged with any bail-eligible crimes and CPL 730.20 (2) only authorizes a court in such circumstances to order either an out-patient examination or confinement of the defendant to a hospital upon the determination by the hospital director (on behalf of the State Office of Mental Health) that such confinement is necessary for an effective examination.

PETITION DENIED/DECISION REVERSED/CHARGES DISMISSED

Supreme Court DENIED the petition (citing *People v Suero*, 67 Misc.3d 229 [Sup. Ct., Kings County 2020]), ruling that CPL 730 authorizes a court to hold a defendant in custody to ensure that a potentially incapacitated person appears for a competency examination.

The Second Department REVERSED (195 AD3d 885 [2nd Dept 2021], the defendant was thereafter deemed unfit to proceed and the charges were dismissed.

COURT OF APPEALS WEIGHS IN DESPITE MOOTNESS

Although the defendant was no longer in custody or charged with anything, (thus rendering Habeas Corpus moot), the Court took up the matter as novel and significant (Matter of LaBelle, supra) and found that the issue was likely to recur and evade review (because CPL 730 exams are typically completed long before the appellate process). Consequently, the matter was converted to an action for declaratory judgment.

The Court began its analysis with the statutory text which states that when a defendant is not in custody when the court issues an EXAMINATION ORDER, it may direct that such exam be conducted on an OUTPATIENT basis, but if the Director informs the court that HOSPITAL CONFINEMENT IS NECESSARY FOR AN EFFECTIVE EXAMINATION, it may direct that the defendant be CONFINED IN A HOSPTAL (designated by the Director) until the examination is completed (CPL 730.20 [2]).

When the defendant is IN CUSTODY at the time the order is issued, the examination MUST BE CONDUCTED AT THE PLACE WHERE THE DEFENDANT IS BEING HELD IN CUSTODY. However, if the Director determines that HOSPITAL CONFINEMENT IS NECESSARY FOR AN EFFECTIVE EXAMINATION, the sheriff must deliver the defendant to such hospital as the Director designates and hold the defendant in custody therein under sufficient guard until the examination is completed (CPL 730.20 [3]).

DEFENDANT WAS NOT IN CUSTODY

In the Court’s view, the defendant was not in custody at arraignment for CPL 730 purposes because he was not charged with a qualifying offense. Rather than refer broadly to the court’s custodial control over a defendant, the statute’s use of “in custody” and “hospital confinement” refers, practically speaking, to the place where he may be psychiatrically examined.

Otherwise, a defendant would have to be remanded or confined in a hospital every time the court ordered a competency examination, thus rendering subdivision two meaningless. As the Court saw it, its interpretation of CPL 730.20 gives meaning to all its terms and harmonizes with the bail statutes which entitle defendants charged with non-qualifying offenses to release either on recognizance or upon non-monetary conditions.

The Court rejected the People’s argument that the use of the phrase “may direct that such examination be conducted on an out-patient basis” provides discretion for the court to remand a defendant for a competency examination. Rather, subdivision two simply instructs the court on how to order the examination when the defendant is at liberty and subdivision three directs where the exam shall be conducted when the defendant is already in custody.

The Legislature’s use of “may” in subdivision two indicates, therefore, that the court may either direct an exam be conducted on an out-patient basis or, upon the Director’s recommendation, in hospital confinement until the exam is completed.

LEGISLATIVE HISTORY

The Court found further support for its interpretation in the statute’s legislative history, in particular, the Judicial Conference Committee of the DC Circuit commentary to CPL 730.20, that “the status of the accused who has been enlarged on bail should not be changed because of a pre-trial mental examination being ordered, …and an accused who is otherwise eligible for bail should not be denied bail because a (pre-trial) medical examination (has been) ordered for them” (see Richard G. Denzer, 1971 Practice Commentary, to CPL 730.20, McKinney’s Cons. Laws of NY, Book 11A, CPL 730.20 at 336).

The Court was also swayed by a report of the NYC Bar Association on the overcrowded state of the City’s psychiatric hospitals which resulted in inordinate delays in conducting competency examinations.

Consequently, the Court concluded that CPL 730.20(2) was intended to replace the mandatory restrictive provisions of the predecessor statute (Code of Crim Procedure 660) with outpatient examinations or hospital confinement only upon recommendation of the Director.

The Court suggested that if the defendant fails to submit to the examination, there are ways to compel compliance such as release under supervision or civil confinement under the Mental Hygiene Law. In any event, simply remanding a defendant charged with a non-qualifying offense to accommodate a CPL 730.20 examination order is verboten.

FINAL THOUGHT.

Counsel representing defendants in need of a competency exam must be sure to remind the court that remanding the client to custody is not an option unless the defendant is charged with a qualifying offense for bail purposes. Even then, absent evidence of a history of the defendant evading court proceedings, alternatives to monetary bail (i.e., release on non-monetary conditions) should be pursued with vigor.