

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Hillsborough County

Hillsborough Superior Court Northern District

State v. Adam Montgomery

216-2022-CR-02372
216-2022-CR-00020

Order Re: Defendant's Appearance at Sentencing Pursuant to RSA 651:4-a

The State has filed a Notice for Defendant's Appearance at Sentencing (Doc. 163) asserting the applicability of RSA 651:4-a to the instant case and requesting that the defendant be transported to his sentencing hearing on May 9, 2024. The defendant filed a responsive pleading seeking to excuse his appearance. (Doc. 164.) The State objects. (Doc. 165.)

RSA 651:4-a states, in pertinent part,

Before a judge sentences or suspends or reduces the sentence of any person for . . . second degree murder . . . the victim of the offense, or the victim's next of kin if the victim has died, shall have the opportunity to address the judge. The victim or victim's next of kin may appear personally or by counsel and may reasonably express his or her views concerning the offense, the person responsible, and the need for restitution. . . . The defendant shall personally appear in court when the victim or victim's next of kin addresses the judge, unless excused by the court.

First, there can be no doubt as to the applicability of RSA 651:4-a to the defendant in this case. On February 22, 2024, the defendant was found guilty by the jury of, among other crimes, second degree murder. The State has informed the defendant and the court that members of the victim's family and others are expected to testify at the sentencing hearing. The defendant now moves to be excused from the hearing arguing only that he "maintains his innocence on the charges of Second Degree Murder, Tampering with a Witness, and Second Degree Assault." (Doc. 164 ¶ 2.)

In passing RSA 651:4-a, the Legislature has made clear that in certain types of cases the defendant should be required to personally appear in court when the victim or victim's next of kin addresses the court. Although the statute allows the judge to exercise its discretion to excuse a defendant from this obligation the Court does not find that the defendant has raised an adequate factual or legal basis to do so here. The only factual basis the defendant asserts is his contention that he is innocent as to some of the charges. However, the defendant has been found guilty, beyond a reasonable doubt, by a jury as to those charges. He asserts no other factual basis for excusal. Additionally, the defendant asserts no legal basis for excusal other than that the statute provides the court with discretion. Were the Court to accept the defendant's request, it would be tantamount to excusing the defendant's appearance simply because he did not wish to attend. The Court finds that this would undermine the Legislature's objective in passing the statute without a compelling basis to do so. (See Doc. 165 ¶¶ 7, 10.) Finally, as the State notes in its objection, while the defendant has a right to attend his sentencing hearing, this does not amount to concomitant right to absent himself from the proceeding. See Singer v. United States, 380 U.S. 24, 34-35 (1965).

For all of the foregoing reasons, the defendant's request to be excused from attendance at his sentencing hearing is DENIED. His appearance is therefore required pursuant to RSA 651:4-a.

The Office of the Hillsborough County Sheriff shall take all necessary steps to ensure the defendant's timely appearance at his sentencing hearing scheduled on May 9, 2024 at 1:00 pm.

SO ORDERED.

April 19, 2024

Date



Amy B. Messer
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 04/19/2024