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Judge Vacates Trafficking Victim's Non-Prostitution Crimes

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A Queens judge has vacated the weapon's possession conviction of a woman who was prostituted as a young girl, finding that New York state's human trafficking law permits courts to dismiss non-prostitution charges related to the trafficking without the consent of the district attorney.

In a case of first impression, Criminal Court Judge Toko Serita (See Profile) held in *People v. LG*, 2000QN056893, 2003QN050066, that a 2010 human trafficking law is not restricted to prostitution-related offenses, as the prosecution had argued.

Serita said LG's misdemeanor conviction for possessing a pen knife for protection against abusive "johns" was a direct consequence of her victimization and, therefore, she is eligible for the second chance envisioned in the law, regardless of the D.A.'s position.

Records show that LG was forced into prostitution when she was 12 and escaped from a life of exploitation when she was 18. LG is now a college student and expects to graduate next year with a degree in public administration and social work, but she is concerned that her past will interfere with her career plans, according to the decision.

In 2010, New York became the first state in the nation to enact legislation allowing human trafficking victims to vacate convictions resulting from their exploitation. Under the law, the movant must establish that she was a trafficking victim at the time of the arrest and that her participation in the offense resulted from exploitation.

LG sought relief under the new law when her criminal history emerged when she petitioned for custody of her nephew. She asked the court to invoke Criminal Procedure Law §440.10 to vacate her 2000 conviction for disorderly conduct and a 2003 conviction for fourth-degree criminal possession of a weapon.

Queens District Attorney Richard Brown objected to vacating the weapons charge, arguing that it is not a prostitution-related offense covered by law and that CPL 440 should not, as a matter of public policy, permit judicial vacatur of such charges.

Serita had addressed the human trafficking law in the past and in 2011 vacated prostitution and drug possession convictions of a woman who was trafficked by her husband (see *People v. GM*, 32 Misc 3d 274).

Although *GM* also involved non-prostitution offenses, namely drug and trespassing counts, prosecutors in Queens and Manhattan agreed to vacate the conviction (NYLJ, May 9, 2011).

GM left open the question—answered by Serita in *LG*—whether the law could be applied to non-prostitution offenses where the prosecution has not consented to vacatur.

Serita said there is no doubt the Legislature's "goal in amending the statute was to avoid punishing the victims of human trafficking by saddling them with a criminal record" and equally apparent that lawmakers "fully expected the statute to provide relief to trafficking victims who were not only arrested for prostitution or loitering for the purposes of prostitution, but were also convicted of other charges."

The facts of the case are not in dispute.

According to the decision, *LG*, who was born in Brooklyn in 1986, was a foster child who was taken in by a pimp when she was 12 and for most of her adolescence was prostituted by a succession of men. *LG* finally escaped in 2004, when she was 18 and her pimp got arrested. She has not been arrested since.

Serita said there is no question or dispute that *LG* was a victim of sex trafficking, and no question that the weapons charge she sought to vacate was not a prostitution offense.

However, the judge said the offense was "undeniably connected to the coerced trafficking activity which led to her arrest on prostitution-related charges and should therefore be vacated."

Melissa Sontag Broudo, an attorney with the Urban Justice Center's Sex Workers Project who represented *GM* and *LG*, said that with the more recent decision "we are starting to see the true potential of the vacating law."

Broudo said *LG* possessed the pen knife to protect herself from violent clients, but there was never any allegation that she used or threatened to use the weapon.

"The intent of the law is to allow survivors to move forward with their lives and not be held back by their victimization and criminalization," Broudo said. "This is just an incredibly sympathetic case."

Assistant District Attorney Roni Piplani argued for the prosecution.

There was no immediate reaction from the D.A.'s office.

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