

D E C I S I O N a n d O R D E R

SUPREME COURT, QUEENS COUNTY
CRIMINAL TERM, PART K-2

THE PEOPLE OF THE STATE OF NEW YORK	:	BY: BARRY KRON, AJSC
	:	
-against-	:	DATED: SEPTEMBER 26, 2008
	:	
BOLA ADEOLA,	:	
	:	IND. NO.: N10479/99
Defendant.	:	

The defendant has moved for "an order resentencing [him] in accordance with P.L. § 70.02" as amended by the provisions of the new Drug Law Reform Act of 2004 (DLRA).

Following a jury trial, defendant was convicted on June 10, 2002 of Criminal Sale of a Controlled Substance in the First Degree, an A-I felony; Criminal Sale of a Controlled Substance in the Second Degree, an A-II felony; and Conspiracy in the Second Degree, a B felony. Defendant was sentenced to consecutive terms of imprisonment of from twenty five years to life for the count of sale in the First Degree, from eight and one-third years to life for the count of sale in the Second Degree, and from eight and one-third years to twenty five years for the count of conspiracy. On appeal, the Appellate Division ordered that the sentences were to

run concurrently instead of consecutively(12 A.D.3d 452 (2d Dept 2004). The defendant was resentenced accordingly on November 8, 2004. Currently, defendant is incarcerated pursuant to this sentence.

On August 3, 2005, the defendant moved for "an order resentencing [him] in accordance with P.L. § 70.02" as amended by the provisions of the new Drug Law Reform Act of 2004 (DLRA). Defendant was represented by Lori Zeno of Queens Law Associates. Simultaneously, counsel also moved for an order resentencing the codefendant Babatunde Shodunke in accordance with the new Drug Law Reform Act of 2004 (DLRA).

After the court considered the moving papers of Lori Zeno, Esq., counsel for defendant, the response of Assistant District Attorney Linda Cantoni, and conducted a hearing, the motion was denied as to the defendant on September 14, 2005.

The Court granted the motion for codefendant Shodunke and resentenced him to eight years with five years post release supervision.

On May 13, 2008, the Appellate Division reversed the order, stating that under the circumstances of this case the defendant established that he was denied effective assistance of counsel because of a conflict of interest due to counsel's dual representation of defendant and his codefendant (51 A.D.3d 811 (2d Dept. 2008)).

Defendant, represented by new counsel, has now again moved for resentencing in accordance with the DLRA. Defendant argues that he should be resentenced in accordance with the amendments to the penal law effected by the Rockefeller Drug Law Reform legislation "to the concurrent determinate sentences within the authorized range". Defendant states that because he has no prior felony conviction, that no violence was involved in the crime, that the pretrial plea offer was five years to life and that he will be deported supports the conclusion that he should be resentenced.

The People argue that defendant's request should be rejected because defendant, as a "high-ranking member of a drug enterprise", is simply "not the type of inmate whom the revisions in the law were meant to benefit". The People point out that defendant has a prior criminal history involving fraud and identity theft and that he continues to have disciplinary problems while incarcerated. The People also argue that the defendant has already received leniency from the appellate court by the reduction of his sentence to a minimum of 25 years.

The DLRA, provides that people are eligible for resentencing when they are in the custody of the New York State Department of Corrections, have been convicted of a class A-I felony offense committed prior to January 13, 2005 (the effective date of the revision), and have been sentenced "to an indeterminate term of imprisonment with a minimum period of not less than fifteen years"

(L. 2004, c. 738, § 23). The DLRA, further provides that upon "its review of the submissions and findings of fact made in connection with the application" the court may refuse to resentence such person where "substantial justice dictates that the application should be denied" (supra, § 23). The court "may consider any facts or circumstances relevant to the imposition of a new sentence which are submitted by such person or the [P]eople and may, in addition, consider the institutional record of confinement of such person" (supra, § 23).

In the instant case, the court finds that the defendant meets the basic criteria and is eligible to be considered for resentencing. The court finds, however, that regarding this defendant, substantial justice dictates that the application should be denied.

The evidence at defendant's trial demonstrated that he had intricate involvement and commanded authority in the drug distribution scheme. The detailed investigation, including court ordered wiretaps, established that defendant was not a mere member of the drug organization, but rather that he played a significant role in the drug trafficking business.

Although defendant had no previous felony conviction, his prior federal conviction for bank fraud based upon identity theft, and his prior conviction for possession of a forged instrument demonstrate his prior involvement in criminal behavior.

Furthermore, defendant's institutional record of confinement submitted in support of his prior application indicated that he was removed from programs for "disciplinary reasons".

Additionally, defendant's argument that his future deportation supports the conclusion that a reduction of his sentence under the statute is warranted is without merit. Defendant's actions in participating in the distribution of heroin into our society require that he complete the imposed sentence. Defendant should not receive a benefit of a reduced sentence because the conviction will have a further collateral deportation consequence in his life (People v. Padilla, 166 A.D. 2d 291 (1st Dept. 1990)).

Contrary to defendant's claim, the fact that he had been offered an opportunity to plead guilty and receive a shorter sentence before trial does not support the conclusion that he should now be resentenced (People v. Mastowski, 26 A.D.3d 744 (4th Dept. 2006; People v. Allah, 283 A.D.2d 436 (2d Dept. 2001)). Notably, the Appellate Division had already reduced defendant's sentence on direct appeal. While the court is aware that this statute was enacted after defendant's appeal, the circumstances of this matter support the determination that any further sentence reduction is unwarranted.

This court had the opportunity to observe defendant's demeanor, character and behavior during the lengthy trial. The court is of the opinion that justice dictates that defendant serve

his sentence in accordance with the currently imposed period of incarceration.

In view of the foregoing, the defendant's application for an order resentencing him is denied.

Order entered accordingly.

The Clerk of the Court is directed to forward a copy of this decision and order to counsel for the defendant and the District Attorney.

BARRY KRON, A.J.S.C.