

MEMORANDUM

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM: PART K-19

THE PEOPLE OF THE STATE OF NEW YORK : BY: STEPHEN A. KNOPF
: :
: DATED: 5/24/06
-against- :
: INDICTMENT NO. QN11476/99
WILSON ALVAREZ :
: Defendant :
-----:

The defendant has filed a motion with this court seeking an order vacating his sentence and re-sentencing pursuant to the 2005 extension of the Drug Law Reform Act ("DLRA-2"), (L, 2005, CH.643, effective 10/29/2005). The defendant seeks a reduction of his sentence from (ten) 10 years to life to the minimum determinate term of incarceration applicable to a second felony offender of six (6) years. The People oppose the defendant's motion, but in the alternative, recommend a determinate prison term of twelve (12) years to be followed by a period of five years post release supervision.

FINDINGS OF FACT

This case arose out of a series of cocaine drug sales, in escalating amounts, that took place over the course of two months, from August 24, 1999 to October 20, 1999, between the defendant and two undercover police officers in Queens County.

On November 4, 1999, the New York City Police Department executed a search warrant at the defendant's house at 32-43 83rd Street in Queens. A search of the residence resulted in the recovery of over four ounces of cocaine and a sum of pre-recorded buy money used in one of the previous transactions between the defendant and the undercover officer.

The defendant was arrested and charged with Criminal Sale of a Controlled Substance in the First Degree (Penal Law § 220.43[1]), Criminal Possession of a Controlled Substance in the First Degree (Penal Law § 220.21[1]), Criminal Sale of a Controlled Substance in the Second Degree (Penal Law § 220.41[1]), four counts of Criminal Sale of a Controlled Substance in the Third Degree (Penal Law § 220.39[1]), and Criminal Possession of a Controlled Substance in the Third Degree

(Penal Law § 220.16[1]), under Queens County Indictment Number QN11476/99.

On February 6, 2001, the defendant, as a second felony offender, pled guilty before a now retired Justice of the Supreme Court, Queens County to Criminal Sale of a Controlled Substance in the Second Degree (PL 220.41[1]), an A-II felony offense. In exchange for his plea of guilty the defendant was promised a sentence of ten years to life incarceration. On March 5, 2001, the defendant was sentenced according to the terms of his plea bargain. He is presently incarcerated pursuant to that sentence.

The defendant now moves for re-sentencing under the recent amendment to what are commonly referred to as the "Rockefeller Drug Laws" enacted in 1973. The defendant claims that he is an inmate eligible for re-sentencing. In support, he submits a list from the Department of Correctional Services of eligible A-II drug offenders who are eligible for re-sentencing. This list contains the defendant's name.

The defendant asks the court to consider evidence of his rehabilitation. To demonstrate rehabilitation, the defendant submits documentation of numerous successfully completed programs

while incarcerated, including a Division of Industries Certificate showing proficient performance in his training and earned eligibility to be programmed into the Industrial Tailor shops while at Clinton Correction Facility. He also submits inmate program reports from Gouverneur Correctional Services, where he received mostly excellent progress evaluations, two positive letters from correction officers and defendant's letter explaining underlying reasons for his disciplinary history. Based on all the above, the defendant urges that "substantial justice dictates" the court grant his application to be re-sentenced to a determinate term of incarceration.

In reply to the defendant's application, the people oppose any reduction of sentence. However, they do concede the defendant is eligible for re-sentence. In support of their opposition, the people cite the seriousness of the instant case, the numerous prior felony convictions for the sale of narcotics, the numerous prior incarcerations and the defendant's numerous infractions committed while he was incarcerated. As an alternative, the People request that if the court is inclined to grant the defendant's motion for re-sentence, he should be re-sentenced to

a determinate term of imprisonment of at least twelve years to be followed by five years post release supervision. They argue a twelve year prison term would reflect the legislature's intent of reducing prison terms for low level, non-violent drug offenders, while still reflecting the seriousness of the defendant's crime, his criminal history and his behavior while in prison. Moreover, the People argue that the minimum sentence is not appropriate in this particular case since the plea bargain the defendant entered into provided for imprisonment closer to the maximum allowed by law at the time, to wit: twelve and one half years to life.

LEGAL ANALYSIS AND CONCLUSIONS

The defendant is eligible for re-sentencing pursuant to the Laws of New York, 2005, Chapter 643, ("DLRA-2"). This application has been correctly made in the Court which imposed the original sentence. Insofar as the sentencing Judge has now retired, this Court has been assigned to entertain this application. Such re-sentencing must be done in accordance with Penal Law § 70.71. The court may consider "...any facts or circumstances relevant to the imposition of a new sentence which are submitted by such person or the People and may, in addition, consider the

institutional record of confinement of such person...". Section 1, L. 2005, CH. 643.

This court will offer an opportunity for a hearing and will bring the applicant before it as mandated by the law. However, it does not appear to this court that there are any controverted issues of fact relevant to the issue of sentencing that would necessitate a hearing, if not so demanded by the defendant.

This court has given due consideration to all the facts of this case, as well as reviewing the relevant law in the area. It is clear that the defendant is eligible for re-sentence and that substantial justice requires the defendant's motion for re-sentence be granted. This defendant, as a second felony offender (non violent), faces a determinate term of imprisonment from six (6) years to fourteen (14) years incarceration. In light of the defendant's role in the events that resulted in his conviction, and the defendant's correctional history, it is this Court's decision that it will sentence the defendant in accordance with the People's alternative recommendation, to a determinative term of imprisonment of twelve years plus five years post release supervision.

In accordance with the law, the defendant has the option to accept or reject this new determinative sentence. He may reject the new sentence by withdrawing this motion or by appealing from this order. If the defendant does not withdraw his application for re-sentence, this Court will order that the defendant's previous sentence be vacated and the defendant be re-sentenced as stated. No new pre-sentence investigation and report is required.

The foregoing constitutes the decision and order of this Court.

Stephen A. Knopf, J.S.C.

