

Short Form Order

SUPREME COURT - STATE OF NEW YORK
CRIMINAL TERM - PART K-18 QUEENS COUNTY

P R E S E N T: Hon. Sheri S. Roman,
Justice

THE PEOPLE OF THE STATE OF NEW YORK: Ind. No.: 8093/82
:
:
-against- : Motion: TO VACATE SENTENCE
:
:
ALONZO GREENE, : Submitted: June 27, 2005
:
DEFENDANT. :

The following papers numbered
1 to 4 submitted in this motion.
Esq.

Donald L. Schechter,
For the Motion

D.A.
Esq.

Hon. Richard A. Brown,
By Johnette Traill,
Opposed
Papers
Numbered

Notice of Motion and Affidavits/Affirmations Annexed1-2
Answering and Reply Affidavits/Affirmations.....3-4

SPECIFY AND INFORM ORDER

Upon the proceedings held in this matter, and in the opinion of the court herein, defendant's application pursuant to Chapter 738, Section 23 of the 2004 Sessions Laws of the State of New York for an order setting aside the sentence in this matter and re-sentencing defendant pursuant to P.L. Section 70.71 is **granted**.

Contingent upon acceptance by the defendant, defendant's prior indeterminate sentence of 15 years to life, imposed by Justice Thorpe on November 28, 1983 will be vacated and defendant will be re-sentenced to a determinate period of incarceration of 15 years and five years post-release supervision. Should defendant decide not to accept the re-sentence he may withdraw the application or file an appeal of this order.

See the accompanying memorandum of this date.

Date: July 28, 2005

Sheri S. Roman, J.S.C.

Gloria D'Amico

Clerk

MEMORANDUM
SUPREME COURT QUEENS COUNTY
CRIMINAL TERM PART K-18

THE PEOPLE OF THE STATE OF NEW YORK :
: Indictment No.:8093/82
:
-against- :
: BY: Sheri S. Roman, J.
ALONZO GREENE, :
: DEFENDANT. :
: DATED: July 28, 2005

Defendant Alonzo Greene moves by notice of motion dated March 24, 2005, for an order setting aside defendant's indeterminate sentence of 15 years to life and re-sentencing defendant pursuant to Section 23 of the Rockefeller Drug Law Reform Act(Chapter 738 Laws of 2004).

Defendant was arrested on February 25, 1982 and charged with Criminal Possession of a Controlled Substance in the First Degree, a Class A-I felony. Defendant was tried by a jury and found guilty. Defendant was sentenced on November 28, 2003 by Judge John Thorpe as a first felony offender to an indeterminate term of imprisonment of 15 years to life. Defendant was 19 years of age at the time.

Defendant appealed the conviction and the Appellate Division affirmed. See People v. Greene, 150 A.D. 2d 604(2d Dept. 1989); leave to appeal denied, 74 N.Y.2d 847(1989).

In accordance with the new legislation providing for

appointment of counsel for indigent defendants who apply for re-sentencing, the court assigned 18-b attorney Donald Schechter to represent defendant.

Assistant District Attorney Johnette Traill submitted an affirmation in opposition to defendant's application for re-sentencing.

On February 25, 1984 defendant was in possession of a paper bag containing four and three-quarter ounces of cocaine. Police Officers at the scene observed the defendant drop the bag as the Officers approached to make further inquiry of the defendant. Defendant was arrested and charged under Queens County Indictment Number 8093/82 with Criminal Possession of a Controlled Substance in the First Degree. Defendant proceeded to a jury trial before presiding Justice John Thorpe. Defendant was found guilty, and on November 28, 1983 was sentenced to an indeterminate sentence of from 15 years to life.

Pursuant to the provisions of the Drug Law Reform Act, the court may consider any facts or circumstances relevant to the imposition of a new sentence which are submitted by the defendant and/or the People and may in addition consider the institutional record of confinement of such person but shall not order a new pre-sentence investigation and report or entertain

any matter challenging the underlying basis of the subject conviction.

The People submitted an affirmation in opposition to the re-sentencing in which the People state that between the years 1989 and 1998, while incarcerated on this judgment of conviction, defendant committed approximately 25 infractions including drug possession, fighting and making threats.

On February 25, 1999, after serving fifteen years and ten months in prison, defendant was released on parole. Once at liberty, defendant's parole was revoked on three occasions. The first revocation in December 2001 was based upon the defendant having purchased merchandise on two separate occasions using checks from a closed account. Defendant pled guilty to Grand Larceny and was sentenced to 60 days incarceration. He was assessed 12 months delinquent time by the parole board.

In December 2003, defendant tested positive for morphine and was also violated for driving a motor vehicle in contravention of his parole restrictions. He was sent to Willard for drug treatment, and he was assessed three months and twenty-five days by the parole board.

In March 2005 defendant tested positive for opiates,

cocaine and morphine. Defendant pled guilty before the parole board to possessing a cell phone and received eleven months.

Based upon the defendant's record of parole revocations and prison disciplinary infractions the People contend that substantial justice requires that the defendant's application to be re-sentenced be denied. The People request, however, that if the court grants the defendant's application to be re-sentenced under the provisions of the new law that he be sentenced to a determinate term of incarceration of twenty years with five years post release supervision which is the present maximum sentence for an A-I drug offender.

Defendant has filed papers in opposition requesting that he be re-sentenced as an A-II drug offender to a determinate term of incarceration of ten years. Defendant contends that because the weight thresholds have now been doubled and as the weight of the drugs which he possessed would now constitute an A-II felony, that he be sentenced to a determinate term of imprisonment of ten years which is the maximum sentence for an A-II first felony drug offender.

Defendant also requests that he be re-sentenced based upon his accomplishments while in prison. The defendant asserts that

while incarcerated he obtained his GED and also received a Certificate in Paralegal Studies from Bronx Community College as well as a Bachelor of Science degree from Mercy College.

Mr. Greene also received a Certificate of Award for completing a course in Transactional Analysis at Green Meadow Prison, as well as a certificate for completing a course in Air Conditioning and Refrigeration. Mr. Greene also completed another course in Radio and TV at Clinton Correctional Facility. Defendant has a Business Administration College degree from Dutchess Community College. Additionally, defendant claims that he was an Inmate Grievance Resolution Committee Representative and was on the Inmate Liaison Committee. Defendant states that after his parole he completed a course in Hotel/Motel Management. In addition, after his parole Mr. Greene was a temporary employee of Labor Ready in Troy, New York, and he completed an approved 100 hour Tractor Trailer Course. Prior to his last parole revocation, Mr. Greene was unemployed due to a job related accident for which he received workman's compensation insurance.

This court has also considered defendant's handwritten letter dated June 11, 2005 in which he contests several of the People's contentions concerning his prison infractions.

Pursuant to Section 23 the court may conduct a hearing to

determine any controverted facts relevant to the issue of sentencing. In this case, after reading all the motion papers the only contested factual issues revolve around the defendant's disciplinary record. However, the court will accept the defendant's explanations with respect to his disciplinary record both in prison and after being paroled, which will obviate the need for a hearing.

As stated above, under the provisions of the Rockefeller Drug Law Reform Act, if the court determines that a person in the custody of the department of correctional services applying for re-sentencing stands convicted of an A-I felony drug offense and was sentenced to a minimum sentence of fifteen years, then the court may find that person is eligible to have his original sentence vacated. He may be re-sentenced in accordance with the present sentencing guidelines for A-I felony drug offenders which is found in Penal Law Section 70.71. In this case, although defendant was paroled after serving over fifteen years, he is presently in custody of the department of correctional services on a parole violation. As he is in custody, the People have conceded that defendant is eligible to be re-sentenced.

Section 23 of Chapter 738 of the laws of 2004 states that the court shall "unless substantial justice dictates that the

application should be denied," specify and inform the defendant of the term of the determinate sentence it would impose.

Upon reviewing the facts and circumstances of the defendant's crime, as well as his record prior to incarceration which did not include any felony convictions, as well as his record while incarcerated and while on parole, this court finds that substantial justice does not require that the court deny the defendant's motion for re-sentencing. Although defendant has had numerous infractions in prison and has had his parole revoked on three occasions, this court feels that the record of achievements which defendant has submitted to this court serves to substantially mitigate in support of defendant's position and against those derelictions. The fact that defendant has successfully completed many rehabilitation, vocational, and educational programs as set forth above, and that he was paroled soon after serving his minimum sentence, and that he has participated in drug treatment programs, indicates that the defendant has made progress towards rehabilitation.

In re-sentencing the defendant the court has taken into consideration the legislative intent to lessen what the legislature has termed "unduly harsh sentences" for A-I offenders as well as the public's need for safety, the

nonviolent nature of the offense, and the defendant's steps towards rehabilitation.

The defendant must be sentenced under the parameters of Penal Law Section 70.71 for A-I offenders. Defendant's argument that he be sentenced as an A-II offender because the weight of the drugs for which he was convicted is presently within the threshold of an A-II crime is without merit. The courts have consistently held that unless specified in the legislation, ameliorative statutes are not to be applied retroactively where a defendant has been convicted and sentenced prior to the effective date of the new law. People v. Carter, 173 A.D.2d 631(2d Dept. 1991).

This court finds that fifteen years plus five years post-release supervision is an appropriate sentence.

Accordingly, defendant is hereby informed that this court will impose a determinate term of imprisonment of fifteen years and five years post release supervision for the conviction of Criminal Possession of a Controlled Substance in the First Degree as authorized for a Class A-I felony in accordance with Penal Law Section 70.71.

Unless the defendant withdraws his application or appeals

from this order the court will enter an order vacating the sentence originally imposed and impose a determinate sentence as specified in this memorandum opinion.

Order entered accordingly.

-

Sheri S. Roman, J.S.C.