

Short Form Order

SUPREME COURT - STATE OF NEW YORK  
CRIMINAL TERM PART L-5 QUEENS COUNTY  
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y.

P R E S E N T :

HON. TIMOTHY J. FLAHERTY  
Justice

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THE PEOPLE OF THE STATE OF NEW YORK	:	IND. NO.	<u>1421-98</u>
	:		
-against-	:	MOTION	<u>Resentence</u>
	:		
	:	DATED	<u>May 10, 2006</u>
STEVEN PRICE	:		
	:	ARGUED	
Defendant.	:		

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Stuart Rubin, Esq.  
For the Motion

Hon. Richard A. Brown  
By: Sharon Y. Brodt,  
Opposed

Esq.

	Papers
	Numbered
Notice of Motion & Affidavit Annexed _____	<u>1</u>
Answering & Reply Affidavit _____	<u>2</u>
Exhibits _____	_____
Minutes _____	_____
Other _____	_____

Defendant's motion for resentence is denied for the reasons set forth in the accompanying Memorandum.



14 AD3rd 718 (2<sup>nd</sup> Dept 2005)] and leave to appeal was denied by the Court of Appeals [4 NY3rd 856 (2005)]. Defendant remains incarcerated pursuant to the judgment.

On December 14, 2004 Governor Pataki signed legislation enacting sweeping changes in the sentencing provisions that were applicable to drug offenses such as that committed by the defendant herein [Chapter 738 of the Laws of 2004]. Thereafter

the defendant, pro se, wrote a letter to this Court invoking the new legislation and requesting that he be resentenced.

Subsequently, defendant retained new counsel who has adopted and supplemented defendant's application.

Because the defendant was convicted of a Class A-1 drug offense prior to the enactment of the aforementioned legislation, he is eligible for re-sentence unless "substantial justice" dictates otherwise. Excluding from consideration the evidence set forth at trial that the defendant shot and killed a fourteen year old boy named Ramon "Lightfoot" Garcia, this Court is nevertheless convinced that the defendant is not entitled to the relief sought herein.

The primary reason is the criminal record of the defendant, prior to his incarceration on the case at bar. He was arrested and indicted four times between November 1989 and January 1990. On February 14, 1990 he pled guilty to Possession of a Controlled Substance in the Fifth Degree, Criminal Sale of a Controlled Substance in the Third Degree, Attempted Criminal Sale of a Controlled Substance in the Third Degree and Criminal Mischief in the Second Degree. These four pleas were separately taken to cover the four indictments and he was sentenced to concurrent terms of imprisonment of from one and a third to four years for each of the crimes.

Two years later, while on parole, defendant was arrested and indicted on two separate occasions, first for First Degree Robbery and then for another drug sale. On July 23, 1993 he pled guilty to Attempted Robbery in the Second Degree and Criminal Sale of a Controlled Substance in the Fifth Degree to cover the respective indictments. He was sentenced to indeterminate concurrent terms of imprisonment of from two and one half to five years as a predicate felon.

With respect to the instant case the Court notes there was evidence adduced at the instant trial which made it clear that the defendant was in the business of distributing drugs in Queens. Specifically, the record established that the defendant was the head of a drug gang called "The Foundation". This fact strongly buttresses the Court's conclusion that resentence is not warranted.

The decision of this Court made on January 17, 2001 to impose a sentence of twenty to life on the defendant was based upon the proof adduced at trial concerning his leadership role in drug trafficking coupled with his criminal background. These same factors underlie this Court's conclusion that , applying the language of the statute [Section 23 of Chapter 738 of the Laws of 2004] that "substantial justice dictates that the application should be denied." Defendant's motion for resentence is therefore denied.

Order entered accordingly.

The Clerk of the Court is directed to mail a copy of this

Memorandum and Order to the attorney for the defendant and to  
the

District Attorney.

DATED: May 10, 2006

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J.S.C.

TIMOTHY J. FLAHERTY,