

MEMORANDUM

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS: CRIMINAL TERM: PART K-4

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THE PEOPLE OF THE STATE OF NEW YORK : BY: WILLIAM M. ERLBAUM, J.  
: :  
-against- : DATE: June 13, 2005  
: :  
UNIKO CARSON, : INDICT. NO. N10707/1997  
DEFENDANT. :  
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Defendant, Uniko Carson, has submitted a motion, dated March 29, 2005, and a reply affirmation dated May 12, 2005, seeking to vacate his prison sentence of 15 years to life under the instant indictment. He is requesting that he be resentenced to 8 years incarceration pursuant to newly enacted Chapter 738 of the 2004 Session Laws of the State of New York, commonly known as the Rockefeller Drug Law Reform Act. The People have filed an affirmation, dated May 5, 2005, consenting to the vacating of the defendant's sentence. However, the People request that the defendant be resentenced to 14 years incarceration.

The defendant was indicted in April, 1997, for the crimes of Conspiracy in the Second Degree [PL 105.15], Criminal Sale of a Controlled Substance in the First Degree [PL 220.43-1], Criminal Possession of a Controlled Substance in the Second Degree [PL 220.18-1], and Criminal Possession of a Controlled Substance in the Third Degree [PL 220.16-1]. The defendant was jointly

indicted with three co-defendants on a Conspiracy in the Second Degree charge, and they were each charged with separate controlled substance crimes. Two of the co-defendants entered guilty pleas to specific charges in the indictment, while the defendant proceeded to a jury trial with co-defendant Leroy Williams.

Various charges of the indictment were dismissed by the Court. These included the Conspiracy in the Second Degree count which applied to both the defendant and co-defendant Williams, and the Criminal Possession of a Controlled Substance in the Second Degree and the Criminal Possession of a Controlled Substance in the Third Degree counts, which applied only to defendant Carson. Other charges against co-defendant Williams were dismissed as well. As to defendant Carson, one count of Criminal Sale of a Controlled Substance in the First Degree was submitted to the jury, and the defendant was convicted, on January 29, 1999, of that count.<sup>1</sup> Essentially, the defendant was found guilty of committing one drug transaction. Co-defendant Williams was convicted of one count of Criminal Sale of a Controlled Substance in the Second Degree [PL 220.41-1]. On

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<sup>1</sup> A lesser included charge was also submitted to the jury. However, since the defendant was convicted of the greater crime, the lesser included charge is of no relevance to this discussion.

March 31, 1999, the defendant was sentenced to the minimum term of incarceration for his A-1 felony, 15 years to life.<sup>2</sup> On March 23, 1999, co-defendant Williams was sentenced to a term of incarceration of 6 years to life.

The purpose of Chapter 738 of the 2004 Session Laws of the State of New York, the so-called Rockefeller Drug Law Reform Act, is to "reform the sentencing structure of New York's drug laws to reduce prison terms for non-violent drug offenders, provide retroactive sentencing relief and make related drug law sentencing improvements" (see, Memorandum in Support, New York State Assembly, Bill number A11895, Chapter 738, Purpose or General Idea of Bill). This reform is in response to the "inordinately harsh punishment" (see, Memorandum in Support, New York State Assembly, Bill number A11895, Chapter 738, Justification) provided by the Rockefeller Drug Laws, and amends or repeals specific sections of New York State's correction law, criminal procedure law, penal law and executive law, as they relate to controlled substances and mandatory prison sentences. See, The Nation's Toughest Drug Law: Evaluating the New York Experience, Final Report of the Joint Committee on New York Drug

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<sup>2</sup> The Court notes that the defendant availed himself of various appellate attacks upon his conviction and sentence which are of no consequence to the issues presented in this motion.

Law Evaluation, The Association of the Bar of the City of New York and the Drug Abuse Council, Inc., 1977.

The Memorandum in Support of the Reform Act indicates that Chapter 738 would "generally take effect 30 days after the bill's effective date, and with respect to prospective sentencing provisions, apply to offenses committed on or after that date" (see also, section 41 of the act). The act was "Approved December 14, 2004, effective as provided in section 41". Furthermore, section 23 of the act indicates that "any person in the custody of the department of correctional services convicted of a class A-1 felony offense defined in article 220 of the penal law which was committed prior to the effective date of this section, and sentenced thereon to an indeterminate term of imprisonment with a minimum period not less than fifteen years pursuant to provisions of the law in effect prior to the effective date of this section, may, upon notice to the appropriate district attorney, apply to be resentenced in accordance with section 70.71 of the penal law in the court which imposed the original sentence."

The defendant in the case at bar was sentenced to 15 years to life, for the A-1 felony of Criminal Sale of a Controlled Substance in the First Degree, which is defined in article 220 of the penal law. He was tried, convicted, and sentenced before the

effective date of the Rockefeller Drug Law Reform Act. Clearly, he is eligible to apply for resentencing. Should the defendant be resentenced in accordance with penal law 70.71, he would be facing a minimum determinate term of incarceration of 8 years and a maximum determinate term of incarceration of 20 years. He would also be subject to 5 years post-release supervision (see, PL 70.45[2], as amended by chapter 738 of the 2004 Session Laws of the State of New York).

Section 23 further indicates that if a defendant meets the criteria for resentencing, the court "shall" grant the request unless "substantial justice dictates that the application should be denied". In this case, the defendant is requesting resentencing, and the People do not oppose that request. In fact, the People state in their affirmation dated May 5, 2005, at page 8, paragraph 22, that they agree with the defendant that "substantial justice does not require that the Court deny defendant's motion to be resentenced". Accordingly, the defendant's application for resentence is granted. The only issue that remains to be determined by this Court, therefore, is, to what term of incarceration under the newly enacted penal law section 70.71 should the defendant be resentenced?

When considering a new sentence for a defendant, section 23 explains that "it may consider any facts or circumstances

relevant to the imposition of a new sentence<sup>3</sup> which are submitted by such person or the people and may, in addition, consider the institutional record of confinement of such person. . .".<sup>4</sup> In the case at bar, the defendant presents the Court, through his attorney's affirmation and reply affirmation, with many mitigating factors that he alleges support his position that he should be resentenced to the minimum term of incarceration of 8 years. The defendant states that he has no prior felony record; that the sentence he received of 15 years to life was much harsher than the sentence of 6 years to life received by co-defendant Williams who had a prior felony conviction, especially in light of the fact that the defendant was interested in settling this matter but was forced to trial due to co-defendant Williams' lack of interest in a plea and the People's choice not

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<sup>3</sup> The Court of Appeals in People v. Farrar, 52 N.Y.2d 302,305 [1981] held that the "determination of an appropriate sentence requires the exercise of discretion after due consideration given to, among other things, the crime charged, the particular circumstances of the individual before the court and the purpose of a penal sanction, i.e., societal protection, rehabilitation and deterrence. The law and strong public policy of this State mandate that the court, detached from outside pressures often brought to bear on the prosecution and defense, make that determination. Quite simply, the court must perform the delicate balancing necessary to accommodate the public and private interests represented in the criminal process."

<sup>4</sup> The statute continues that a court "shall not order a new presentence investigation and report or entertain any matter challenging the underlying basis of the subject conviction".

to sever the cases; that at sentencing on March 31, 1999, the Court was in receipt of nearly 50 letters of support written on his behalf from family, friends, and community members; that his institutional record for infractions is minimal; that the defendant successfully completed numerous rehabilitation, vocational, and educational programs, including earning his GED; that he worked while incarcerated in numerous positions and earned favorable reviews at those tasks; and that should he be released sooner rather than later, the defendant has employment opportunities waiting for him, a home with his mother, family support, and a family friend who is a social worker who is willing to assist the defendant. Lastly, the defendant alleges a minimum sentence would be consistent with other recent resentencings in Queens County.<sup>5</sup>

In support of their view that the defendant should be resentenced to 14 years incarceration, the People, in their affirmation in opposition dated May 5, 2005, submit that the defendant, though convicted of a single drug transaction, was a major player in the sale of drugs in Lefrak City in Queens County, and his arrest was due to a large investigation into drug

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<sup>5</sup> The defendant refers to People v. Stacy Johnson, and People v. Miguel Arenas. Both cases were recently pending in New York State Supreme Court, Queens County. This Court has no independent information regarding these cases and is unfamiliar with any of the facts and circumstances therein.

trafficking in that neighborhood. Furthermore, they claim that a 14 year term of incarceration "would reflect the legislative intent in enacting the new sentencing provision- to reduce prison terms for non-violent drug offenders- while, at the same time, reflect the seriousness of defendant's crime" (see, People's affirmation, dated May 5, 2005, page 9, paragraph 23).

The Court has carefully considered the arguments of the parties in this case, and pursuant to section 23 of the Rockefeller Drug Law Reform Act will comment on them. Regarding the People's position, while the Court certainly considers the facts and circumstances surrounding the arrest and conviction of the defendant to be an important issue, it was well aware of those facts and circumstances at the time of the defendant's original sentencing. The recitation of the case, as viewed by the People, does not aid the Court significantly in answering the question of what sentence would be appropriate for the defendant now. Many years have passed since the defendant was arrested and then convicted of the instant offense, and the People have offered the Court little original insight into their view of the defendant's life at the present time.

On the other hand, the defendant has presented the Court with facts and supporting documentation demonstrating the defendant's situation since he has been incarcerated, and

establishing what his situation would be upon his release. This evidence has not been contested by the People.<sup>6</sup> Accordingly, these facts and the supporting documentation, which are clearly mitigating factors in support of the defendant's position seeking the minimum term of incarceration, are hereby accepted by the Court as true.

Furthermore, the Court finds it significant that the People do not contest the defendant's analysis in his reply affirmation, dated May 12, 2005, at pages 4-5, paragraphs 7-9, stating that if the defendant is resentenced to a determinate term of incarceration of 14 years, he would be eligible for release after serving the same amount of time as he would be under his current sentence of 15 years to life. They also apparently do not disagree with the defendant's analysis that if the defendant is resentenced to a determinate term of 14 years, his term of post-release supervision under that sentence would actually be longer than his term of parole would be under a 15 years to life sentence. Accordingly, since it is undisputed, the Court accepts

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<sup>6</sup> Accordingly, a hearing pursuant to section 23, "to determine any controverted issue of fact relevant to the issue of sentencing" is not needed. However, the People do point out that the defendant committed three infractions while incarcerated, not two as alleged by the defense. In their reply affirmation, dated May 12, 2005, the defense concedes that the defendant had three infractions, and states that the defense did not have the updated records at the time the motion was filed and apologizes for any inconvenience to the Court.

the defendant's analysis regarding the comparability of his instant sentence to a proposed sentence of 14 years.

Based upon this comparison, that if the defendant is resentenced to a 14 year determinate term he might well be in no better a position than he is in right now, the Court concludes that if the People's suggestion of a 14 year prison term were followed, it would amount to a Pyrric victory for the defendant. Additionally, since the People base their 14 year request only on their claim that the defendant was a major player in the sale of drugs in Lefrak City in Queens County, despite his conviction for a single drug sale, and that the defendant was the subject of a few very minor disciplinary infractions while imprisoned, the Court finds that a 14 year resentence herein would derogate the mandate, letter, and spirit of the Rockefeller Drug Law Reform Act which seeks to reduce prison terms for non-violent drug offenders.<sup>7</sup>

In carrying out the Court's responsibility herein, it considered not only the arguments and positions of the parties today, but also studied the minutes of the original sentencing hearing that was conducted for this defendant on March 31, 1999. Due to the mandatory minimums of the Rockefeller Drug Laws, although the defendant was sentenced to a mandatory minimum

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<sup>7</sup> The defendant is a non-violent offender.

sentence of 15 years to life, co-defendant Williams received a sentence of only 6 years to life. The Court noted its feelings at the time regarding the sentencing of the co-defendant, who was allegedly involved in the same conspiracy, that "there must be some proportionality and the differentiability [sic] between the way Mr. Williams was treated and Mr. Carson was treated breeds disrespect for the law and undermines respect for the law..." (see, sentencing minutes, dated March 31, 1999 at page 64). The Court upon reading those minutes is reminded of that position and feels that it is as relevant today as it was then. However, today, unlike in 1999, the Court has the opportunity to remedy that disproportionality.

Upon a studied review of the submissions of the respective parties, and of all the issues raised in their motion papers, the Court is persuaded by the defendant's position in this case, finding his arguments to be compelling. Based upon the aforementioned facts, including that the defendant has no prior felony record, that he has the support of family, a home to go to and employment waiting for him upon his eventual release from incarceration, a predominantly positive institutional record, that his conviction is for a non-violent offense, that he was unable to avoid trial with a plea to a lesser offense due to the People's refusal to sever his case from that of co-defendant

Williams who refused to plea bargain, that ironically co-defendant Williams received a significantly lighter sentence than the defendant, and that the point of the Rockefeller Drug Law Reform Act is to reduce prison sentences, the Court concludes that in this case, it is appropriate that the defendant be resentenced to the minimum term of incarceration under the new penal law section 70.71. Eight years is a significant amount of prison time, and the Court finds that the purposes of the penal law, namely public safety, deterrence, and rehabilitation (see, PL 1.05[6]), will best be served by the imposition of that sentence.

Accordingly, the defendant's motion for resentence is hereby granted. The defendant will be resentenced, with all deliberate speed, to an 8 year term of incarceration. Five years post-release supervision will also be imposed.

This constitutes the decision and order of the Court.

The Clerk of the Court is directed to distribute copies of this decision and order to the attorney for the defendant and to the District Attorney.

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WILLIAM M. ERLBAUM, J.S.C.

