Short Form Order

SUPREME COURT STATE OF NEW YORK
CRIMINAL TERM - PART K-TRP QUEENS COUNTY
125-01 QUEENS BLVD., KEW GARDENS, N.Y. 11415

P R E S E N T:

HON. BARRY KRON, A.J.S.C.
Acting Justice

THE PEOPLE OF THE STATE OF NEW YORK	Ind. No. 1286/03
-against-	Motion Set Aside Sentence
MICHAEL HALLMAN,	
Defendant.	Submitted May 3, 2005

The following papers numbered
1 to 2 submitted in this motion.

By: Michael Hallman, Pro Se
For The Motion

HON. RICHARD A. BROWN, D.A.
By: William H. Branigan, ADA
Opposed

	Papers Numbered
Notice of Motion/Affidavits/Exhibits	1
Answering & Reply Affidavits/Exhibits	2

Defendant, pro se, moves pursuant to CPL 440.20 to set aside his sentence and, thereafter, be resentenced under the more favorable provisions of the 2004 Drug Law Reform Act ("DLRA"), which was enacted approximately eight months after he was sentenced upon his guilty plea.

Defendant's motion is without merit, and hereby denied.

On May 22, 2003, defendant was indicted for attempted murder in the second degree, assault in the first degree, criminal possession of a weapon in the second degree, and criminal

possession of a controlled substance in the second and seventh degrees.

Defendant pled guilty to criminal possession of a controlled substance in the third degree . On April 8, 2004, he was sentenced in accordance with his plea bargain, as a second felony offender, to a term of from six to twelve years imprisonment. Defendant signed a waiver of the right to appeal as part of his bargain. He has not filed a notice of appeal.

The DLRA was signed into law on December 14, 2004 (L.2004, Ch. 738). The purpose of the Act was to mitigate the perceived harshness of the drug laws adopted in the 1970's, commonly known as the "Rockefeller Drug Laws." Among other things, the DLRA revised the definition of class A felony drug possession offenses, substituted a determinate sentencing scheme for all drug-related felony offenses, offered a resentencing option for persons previously sentenced to life terms for A-1 felony drug crimes, and revised conditional and temporary release procedures.

Section 41(d-1) of the Act provides that its sentencing provisions, including the determinate sentencing which defendant seeks, shall take effect on the 30th day after enactment, and "shall apply to crimes committed on or after the effective date....", ie. crimes committed on or after January 13, 2005.

Generally, nonprocedural statutes "are not to be applied retroactively absent a plainly manifested legislative intent to that effect" (People v Oliver, 1 NY2d 152, 157; see also, People v Behlog, 74 NY2d 237; McKinney's Cons Laws of NY, Book 1, Statutes § 51). However, an exception to this general rule of nonretroactivity exists for ameliorative changes in the law which reduce the punishment for a particular crime (see, People v Behlog, supra; People v Oliver, supra). Under this "ameliorative exception", absent contrary evidence of legislative intent, the punishment standard existing at the time of sentencing, rather than at the time of commission of the crime, applies to determine the defendant's sentence (see, People v Walker, 81 NY2d 661; People v Behlog, supra; People v Oliver, supra; People v Allen, 309 AD2d 624, lv denied 1 NY3d 624; People v Goolsby, 177 AD2d 709, lv denied 79 NY2d 857; People v Murray, 794 NYS2d 885; People v Denton, 7 Misc3d 373); that is, a defendant who committed a crime prior to the effective date of the ameliorative change, but

was sentenced afterwards, would receive its benefit. Defendant, however, both committed his crime and was sentenced prior to the effective date of the DLRA; thus, the ameliorative exception to the general rule of nonretroactivity does not apply, and he may not receive the benefit of its lesser punishment (id; see also, People v Payne, 6 Misc3d 1015A; People v Frain, 6 Misc3d 1029A).

Finally, since the DLRA is inapplicable to defendant, his argument concerning its unconstitutionality is moot.

This constitutes the decision and order of the court.

Date: June 10, 2005

BARRY KRON, A.J.S.C.