

People v Vaughan

2006 NY Slip Op 30544(U)

October 16, 2006

Supreme Court, Kings County

Docket Number: 4290/1989

Judge: Vincent M. Del Giudice

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS - CRIMINAL TERM - PART 25**

----- X
PEOPLE OF THE STATE OF NEW YORK

IND. NO. 4290/1989

vs.

MICHAEL VAUGHAN,

**DECISION
AND ORDER**

Defendant.

-----X

VINCENT M. DEL GIUDICE, J.

Defendant was convicted, after a jury trial, of Criminal Possession of a Controlled Substance in the First Degree and Criminal Possession of a Weapon in the Second Degree, and upon his plea of guilty, of Assault in the Second Degree, and was sentenced on May 22, 1990, as a persistent violent felony offender, to consecutive terms of incarceration, respectively, of 15 years to life, 9 years to life, and 6 years to life (Greenberg, J.).

On appeal, the Appellate Division affirmed the judgments of conviction (People v. Vaughan, 187 AD2d 685, lv denied 81 NY2d 848).

By motion dated June 27, 2006, defendant moves for resentencing pursuant to the Rockefeller Drug Law Reform Act of 2004 which provides, retroactively, a determinate sentencing range of 15 to 30 years for a drug offender convicted of a class A-1 drug felony who has been convicted previously of a violent felony offense (defendant's status). Specifically, defendant moves for vacatur of the 15 years to life sentence imposed on the

class A-1 felony drug conviction and a resentence thereon to 15 years with 5 years post-release supervision, a further sentence modification to have the felony drug conviction run concurrently with the consecutive sentences imposed on the weapon and assault convictions, and for resentence from a class A-1 drug felony sentence, to a class A-11 drug felony sentence, under the doctrine of “amelioration”, based upon reduced drug threshold weights under the Drug Law Reform Act.

In support of the instant motion, defendant affirms his successful completion, while incarcerated, of vocational training programs in custodial maintenance (in 1997), food service (in 2004) and infectious waste control (in 2006). Defendant also affirms his correctional system disciplinary record, including 14 Tier 3 infractions and 11 Tier 2 infractions, which he concludes represent “an average of 1.66 infractions per year”, and argues that current statutory and case law support sentence modification and amelioration.


The People oppose the relief requested in the instant motion citing, *inter alia*, defendant’s “violent criminal history” and “continuous and excessive misbehavior while incarcerated”, including attempted escape from custody and various violent assault and weapons possession incidents.

Upon review of all submissions of the parties, the facts, circumstances and appellate history of the instant case, and defendant’s institutional records, I find no basis for the requested resentencing. Further, the sentence imposed on the class A-1 drug felony conviction was imposed in accordance with the law to run consecutively with the other sentences imposed and thus may not be modified by this court to run concurrently (*see*, CPL

430.10; see, also, Murray v. Goord, 1 NY3d 29). Finally, in the circumstances herein, defendant is not entitled to the amelioration requested (see, e.g., People v. Quinones, 23 AD3d 218, lv denied 6 NY3d 817).

Based upon all of the foregoing, defendant's motion for resentencing is denied in all respects. This constitutes the Decision and Order of the court.

Dated: Brooklyn, New York
October 16, 2006



Vincent M. Del Giudice
Judge of the Court of Claims
Acting Supreme Court Justice

ENTERED

OCT 17 2006

NANCY T. SUNSHINE
COUNTY CLERK