

People v Gales

2007 NY Slip Op 30204(U)

March 9, 2007

Supreme Court, New York County

Docket Number: 0009386

Judge: Edward J. McLaughlin

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: CRIMINAL TERM: PART 93

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THE PEOPLE OF THE STATE OF NEW YORK,

— against —

SHARMALEE GALES,

Defendant.

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EDWARD J. MCLAUGHLIN, J.:

Defendant moves to renew his motion for resentencing under the Drug Law Reform Act of 2005 (*see* L 2005, ch 643). He was convicted of an A-II felony drug offense (*see* PL 220.08), but this court found defendant ineligible for resentencing because he also is serving a sentence for a violent felony offense (*see* L 2005, ch 643, § 1). Accordingly, this court denied defendant’s motion.

Defendant moves to renew his motion on two grounds. First, he contends that the 2005 DLRA violates equal protection of the law because the more restrictive eligibility requirements for class A-II felony drug offenders do not apply to class A-I felony drug offenders. Second, he argues that his sentence in this case constitutes cruel and unusual punishment in violation of the 8th Amendment to the Federal Constitution. This court grants defendant’s motion to renew, but adheres to the previous decision denying the motion.

Defendant’s new arguments provide no basis for changing this court’s decision to deny him resentencing. The Legislature’s decision to treat class A-I and class A-II felony

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drug offenders differently for purposes of resentencing does not deny equal protection to defendants conviction of a class A-II felony drug offense. The significant disparity in the sentencing ranges for class A-I and class A-II felony drug offenses rationally supports the Legislature's decision to grant the opportunity for resentence to the offenders serving the most severe minimum sentence, and to establish eligibility requirements for the offenders serving significantly more lenient sentences. For instance, the Legislature legitimately could decide, as a matter of public policy, to deny resentencing to any A-II drug offender serving a sentence for a violent felony offense (*see* L 2005, ch 643, § 1). Lastly, defendant has not established that his drug sentence is grossly disproportionate to the crime that he committed (*see People v Broadie*, 37 NY2d 100, 111 [1975]).

Dated: March 9, 2007

J.