

People v Ramos

2007 NY Slip Op 30240(U)

March 21, 2007

Supreme Court, New York County

Docket Number: 0001813

Judge: Richard D. Carruthers

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

Ind. No.
1813/86

DECISION
AND
ORDER

PEDRO RAMOS,

Defendant.

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RICHARD D. CARRUTHERS, J.:

The defendant has filed a *pro se* motion in which he applies for re-sentencing pursuant to P.L. §70.71, as amended by Chapter 643 of the Laws of 2005, enacted on August 30, 2005, known as the Drug Law Reform Act. The People have filed a response in opposition to the defendant's motion. The defendant entered a plea of guilty to criminal possession of a controlled substance in the second degree (P.L. §220.18) on October 30, 1986 before this Court in New York County Supreme Court, and was sentenced on December 1, 1986.

The statute on which the defendant bases his argument states that an A-II felony drug offender must meet certain criteria to be eligible for re-sentencing. He must have received a sentence of at least three years to life imprisonment as a result of a conviction of an A-II drug felony committed prior to October 29, 2005. He must be in the custody of the department of correctional services. He must also be "more than twelve months from being an eligible

inmate as that term is defined in subdivision 2 of section 851 of the correction law. . . ." (Sessions Law of 2005, ch. 643, §1) According to the Corrections Law cited in the new statute, an "eligible inmate" is defined as a person "who will become eligible for release . . . within two years."

Although the defendant was convicted of an A-II drug felony committed prior to October 29, 2005 and was sentenced to four years to life imprisonment, he fails to meet the remaining two requirements of the Drug Law Reform Act of 2005. According to documents sent to the Court by the New York State Department of Correctional Services and also provided in the People's response, the defendant was released from custody on this case in 1990. In fact, the defendant himself admits that he was released on parole in 1990. Thus, it is clear that the defendant does not meet the requirement of being in the custody of the department of correctional services, since he was released in 1990. He further fails to meet the requirement of being within two years of eligibility for release, since he was in fact released in 1990. He subsequently had his parole revoked in 2006, and has a parole hearing date of April 2007. The Court notes that there is no provision in the new statute that pertains to persons who have been released from custody, but who are then incarcerated again after a parole violation. Rather, the statute contains specific language concerning the length of time prior to release on the A-II felony drug offense during which a defendant may apply for relief. The defendant in this case no longer falls within that time frame.

For the foregoing reasons, the defendant's motion for re-sentencing is denied. This constitutes the order and decision of the Court.

Dated: New York, New York
March 21, 2007

FILED MAR 21 2007

Richard D. Carruthers
A.J.S.C.

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