

**People v Hall**

2007 NY Slip Op 30604(U)

April 3, 2007

Supreme Court, Kings County

Docket Number: 0001068/1991

Judge: Carolyn E. Demarest

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.

At an IAS Term, Part 19 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 3rd day of April, 2007.

P R E S E N T:  
HON. CAROLYN E. DEMAREST,  
Justice.

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

Indictment No. 1068/91

- against -

LEONARD HALL,  
Defendant.  
-----X

Defendant Leonard Hall, originally pro se, but now represented by counsel, moves pursuant to CPL 440.20 to set aside his sentence and for resentencing under the Drug Law Reform Act of 2005 ("DLRA").

On October 11, 1991, defendant was sentenced to 3 years to life, on his plea of guilty to the class A-II felony of Criminal Possession of a Controlled Substance in the Second Degree. He was received by the Department of Correctional Services ("DOCS") on December 13, 1991. His parole eligibility date was January 28, 1994. After serving several months he was placed in the Shock Incarceration Program, and thereby earned an early release to parole. On September 16, 2006, he was declared delinquent. At the conclusion of the parole revocation process he was returned to DOCS on November 10, 2006, to serve the balance of his minimum sentence. His new parole eligibility date is October 26, 2008.

Chapter 643 of the laws of 2005 authorizes certain inmates convicted of class A-II drug felonies to apply to be resentenced in accordance with Section 70.71 of the Penal Law. A person who is “more than twelve months from being an eligible inmate as that term is defined in subdivision 2 of section 851 of the correction law” may be eligible for relief (Chapter 643, Laws of 2005). Correction Law §851(2) provides as follows: “‘Eligible inmate’ means: a person confined in an institution who is eligible for release on parole or who will become eligible for release on parole or conditional release within two years.” The language of Chapter 643 read together with Correction Law § 815(2) has been interpreted as meaning that in order to be eligible for resentencing, an inmate must be more than three years from eligibility for parole. People v. Parris, 35 AD3d 891 (2d Dep’t, 2006); People v. Bautista, 26 AD3d 230 (1<sup>st</sup> Dep’t, 2006); People v. Mills, 14 Misc.3d 1220(A) (Co. Ct, Onondaga Co., 2007). Since defendant’s parole eligibility date is October 26, 2008, he is not more than three years from eligibility for parole.

In opposition to defendant’s motion, the People argued that defendant is further ineligible for resentence because he is a returned parole violator, referring the Court to People v. Bagby, 11 Misc.3d 882(Sup. Ct, Westchester Co. 2006), which held that the DLRA does not apply to parolees who have been incarcerated for a parole violation. Defendant contended that his case is distinguishable from Bagby because he was released to shock incarceration, and then reincarcerated pursuant to 9 NYCRR 8010.3, to serve the balance of his original sentence, arguing, in effect, that he is now incarcerated on his original sentence and therefore not subject to the restriction articulated in Bagby.

However, the Third Department, on March 15, 2007, in People v. McCloud, 2007 NY Slip Op. 01991, held that a defendant who had been released on shock parole was not eligible for resentencing pursuant to the DLRA. “We do not believe that the drug reform laws were intended to apply to offenders who have served their term of imprisonment, been

[\* 3]  
released to parole supervision, violated their parole and, as a result, were subject to a subsequent period of incarceration.”

Since defendant is more than three years away from his parole eligibility date in October 2008, and since he is ineligible as a returned parole violator, his motion for resentencing pursuant to the DLRA is denied.

This constitutes the decision and order of the Court.

ENTER:



---

CAROLYN E. DEMAREST

J.S.C.