

**People v Roosevelt**

2007 NY Slip Op 31378(U)

April 13, 2007

Supreme Court, New York County

Docket Number: 0001512/2003

Judge: Lewis Bart Stone

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 39

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THE PEOPLE OF THE STATE OF NEW YORK	:	
	:	Decision
-against-	:	
	:	Ind. No. 1512/03
ANTHONY ROOSEVELT,	:	
	:	
Defendant.	:	
-----X		
For the People:		Kathleen Doyle, Esq.
For the Defendant:		Nancy Little, Esq.

Lewis Bart Stone, J:

Anthony Roosevelt (“Roosevelt”) moves pursuant to Chapter 643 of the Laws of 2005 to be re-sentenced to a determinate sentence of incarceration in accordance with the October 29, 2005 extension of the provisions of the Drug Law Reform Act of 2004 (“DLRA-2”). On February 19, 2004, Roosevelt plead guilty to one count of Criminal Possession of a Controlled Substance in the Second Degree, in satisfaction of the indictment, with a waiver of appeal, with a sentence of seven years to life. On April 13, 2004, Roosevelt was sentenced as promised. His conviction was affirmed. People v. Roosevelt, 33 AD3d 314 (1<sup>st</sup> Dept. 2006).

As Roosevelt was convicted of an A-II drug felony, he may apply to be re-sentenced under DLRA-2, which provides that the court shall re-sentence an “eligible” defendant “unless substantial justice dictates that the application be

denied.” Roosevelt’s contends is that he is eligible to be re-sentenced and that he is type of offender that the legislature contemplated when making reforms of the drug laws. The People contend that Roosevelt is not eligible for re-sentencing but if the Court finds that he is so eligible, that substantial justice dictates that he should not be re-sentenced.

Roosevelt seeks a determinate sentence of four year with five years of post-release supervision, the minimum sentence for a first time offender under the revised law. The People oppose the application for re-sentencing, first on eligibility grounds, and second arguing that “substantial justice dictates that the application should be denied.” Should the Court find Roosevelt eligible for re-sentencing, the People request that the Court sentence Roosevelt to a determinate sentence of seven years with five years of post release supervision.

### **FINDINGS OF FACTS**

Roosevelt was arrested on March 11, 2003 at West 181<sup>st</sup> Street and Wadsworth Avenue. An undercover narcotics officer, doing narcotic enforcement in that area, saw Roosevelt hand an unidentified person currency. That person entered a building and then returned to Roosevelt, carrying packages whose wrappings the undercover recognized to be typical cocaine packaging. Roosevelt took the packages and entered

a taxicab. When the police stopped the cab, they recovered the packages, one from the rear floor of the cab and the other from the bag in the cab that the officer had seen Roosevelt carrying. The two bags contained approximately nineteen ounces of cocaine. Roosevelt was arrested and charged with one count each of Criminal Possession of a Controlled Substance in the First and Third Degrees, A-I and B felonies respectively. Roosevelt's motion to suppress the cocaine for lack of probable cause was denied after a hearing before this Court. Subsequently, Roosevelt pleaded guilty as described above.

Roosevelt has three previous criminal convictions from Connecticut which occurred between 1998 until this arrest. The first conviction in 1998, Breach of the Peace, for which he received a sentence of probation, was followed by a conviction in 2001 for Carrying a Pistol without a permit, for which Roosevelt received a jail sentence and probation. The third conviction was for possession of more than four ounces of marijuana for which he received a sentence of six months. At the time of his arrest in the instant case, Roosevelt was on probation for the gun charge.

Since his incarceration on his drug charge three years ago, Roosevelt has amassed six Tier III infractions, and two Tier II infractions. These occurred between November 2004 and November 2006. He has not completed any educational, vocational and therapeutic programs. Roosevelt states that the infractions occurred

early in his incarceration which began in February 2004 and were due to the adjustment to prison life, although one infraction took place in November 2006, two years after his initial incarceration and two infractions in March and May of 2005 took place one year after his entry into the prison system. Roosevelt has provided evidence regarding his family support for his post release housing and re-entry into the community, although there is an open question of his probation violation from Connecticut upon his release.

The People oppose re-sentencing on the grounds that Roosevelt, who possessed nineteen ounces of cocaine with a street value of between \$16,000 and \$20,000, is not the kind of low-level non-violent offender the new reforms were designed to benefit. They point the fact that this was a large amount of cocaine, clearly for resale, and that his Connecticut conviction for weapon possession does not fit him into the category of a non-violent “bit player.” The People contend that this is evidence that he is not a person deserving of a re-sentence under the new law.

### **CONCLUSIONS OF LAW**

DLRA-2 provides that a defendant convicted of an A-II drug felony and who is considered “eligible” shall be re-sentenced “unless substantial justice dictates that the application should be denied.” All parties agree that Roosevelt is “eligible” to be

re-sentenced under Correction Law Section 851(2) because he is more than twelve months from being eligible from temporary release and not eligible for parole within three years, as he is not eligible for parole until 2010. See People v. Bautista, 26 AD3d 230 (1<sup>st</sup> Dept. 2006; lv to app den., 7 NY3d 838 (2006). Both sides are in disagreement, however, as to the interpretation of the eligibility requirements of Correction Law Section 803(1) relating to merit time allowances. The People contend that Roosevelt is disqualified to be re-sentenced because he fails to meet the eligibility requirements of Correction Law §803(1)(d)(iv) because Roosevelt's merit time was withheld as a result of his infractions while incarcerated. Roosevelt counters that the People have confused eligibility requirements for merit time under § 803(1)(d)(I) and (ii) with the discretionary granting of merit time under §803(1)(d)(iv). Roosevelt contends the Court is required to follow People v. Sanders, 36 AD3d 944 (2d Dept 2007), a Second Department case, as there has been no decision on this issue yet from this department or the Court of Appeals. Roosevelt also cites as persuasive authority, People v Quinones, 11 Misc3d 582 (Sup Ct., NY Co., 2005)(Kahn, J), People v. Schulze, 11 Misc.3d 106(A) (Sup Ct., Nassau Co. 2006)(Calabrese, J), and People v. Johnson (N.Y. Sup Ct, 2006) (Wittner, J), all of which conclude that the reference in DLRA-2 to the "eligibility" requirements of Correction Law Section 803(1)(d) does not preclude a defendant from whom a merit

time allowance has been withheld pursuant to §803(1)(d)(iv) from seeking re-sentencing. These courts find that engrafting this provision into the requirements for re-sentencing would “vest an authority with the Department of Correction that the Legislature clearly could not have intended.” Sanders at 946.

Roosevelt urges that this Court, in any event, is bound by the holding of the Second Department in the absence of any authority of the First Department or the Court of Appeals, citing Sanders and People v. Turner, 5 NY 3d 476 (2005) for this proposition. This Court notes, however, that the decision in Sanders is not a holding of the First Department and that the Court of Appeals authority is dicta and not holding. Because this Court would, as discussed below, even if it adopted Roosevelt’s position and rejected the People’s position on eligibility, find that, that substantial justice would dictate that Roosevelt’s application for re-sentencing be denied, this Court need not decide whether Roosevelt is eligible for re-sentencing in reaching its decision hereunder.

This Court takes notice of the long and public debate which led to the passage of DLRA-2 and its predecessor, Chapter 738 and Section 23, which amended the sentence for conviction of A-I felony drug offenses. While one issue was an objection to the general severity of penalties for drug crimes which led to a general prospective reduction of sentence ranges (except where a defendant had a conviction

for certain violent crimes),<sup>1</sup> the legislation also addressed the publicly debated issue of the supposedly naïf who was involved, but not too much, in a drug transaction involving a large amount of drugs, and who had been subjected to a long prison term by reason of acting in concert theories which penalized all participants in a criminal act with a high minimum sentence, regardless of the extent of their participation. As Section 23 expressly authorized the re-sentencing Court to order a shorter or longer fixed sentence on re-sentencing than the prior minimum of the indeterminate sentence, this indicates that the Legislature wished to distinguish between major players and bit players in a drug selling tragedy.

This Court finds that Roosevelt was not an “innocent” or bystander caught up in a drug deal. Roosevelt was personally handling a large amount of cash and make the transaction for drugs by himself. The amount of drugs was over one pound and clearly meant for sale. Roosevelt’s criminal record also indicates that he was not new to drugs and violence, having convictions for a weapons charge and for possession over four ounces of marijuana, also not an insubstantial amount. The Court further

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<sup>1</sup> Although Laws of 2004, Chapter 738, which enacted Section 23 has been characterized as an amelioration of the State’s “drugs laws,” such chapter does not universally reduce sentences for drug crimes, only most of them. Where violence is present, under certain circumstances, minimum sentences are increased over prior law. The sponsor’s memorandum made it clear that such an increase was both warranted and intended. The legislature’s concern about violence is also covered by its change in predicate rules, providing for different treatment of violent and non-violent predicates for A-I drug felonies being re-sentenced under Section 23, a differentiation absent in prior law.

finds that Roosevelt's prison record is not benign. The Court's experience in other DLRA applications shows Roosevelt's record to be substantially worse than applicants to whom relief has been granted by this Court under the DLRA. This poor record adds further support to the conclusion of this Court.

Finding that substantial justice would dictate that Roosevelt's application for re-sentencing be denied, whether or not Roosevelt was eligible for re-sentencing, this Court denies Roosevelt's motion.

This constitutes the Judgment and Order of the Court.

DATED: April 13, 2007  
NEW YORK, NEW YORK



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Hon. Lewis Bart Stone  
Justice of the Supreme Court

HON. LEWIS BART STONE