

People v Gilbert

2007 NY Slip Op 31745(U)

June 24, 2007

Suffolk County Ct

Docket Number: 0002236/1999

Judge: Ralph T. Gazzillo

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MEMORANDUM

COUNTY COURT: SUFFOLK COUNTY (CRIMINAL TERM, PART 1)

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THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiff

-vs-

RYAN J. GILBERT,
Defendant

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: By: **Hon. Ralph T. Gazzillo**
: **J.C.C.**

:
: Dated: **December 20, 2005**
:
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: Ind. No.: **2236-99**
:
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HON. THOMAS J. SPOTA, III
Suffolk County District Attorney
By: **A.D.A. MARCIA R. KUCERA, Esq.**
200 Center Drive
Riverhead, New York 11901

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The defendant moves for an order pursuant to the supervisory powers conferred upon the Court pursuant to the Due Process Clause of the New York State Constitution (article 1, section 6), and the fundamental fairness required thereby, setting aside defendant’s sentence of three (3) to nine (9) years for his conviction of the Class “B” felony of Criminal Sale of a Controlled Substance in the 3rd Degree originally imposed upon defendant on January 11, 2000, and re-sentencing defendant to a definite term of imprisonment of one (1) year because such a modified sentence is the only manner in which this Court can effectuate the ameliorative provisions of the “Reformed Rockefeller Drug Law” (Chapter 738 of the 2004 Laws of New York) as they apply uniquely to this defendant/inmate already sentenced legally under the Law before its reform, but unable to benefit from said ameliorative provisions unless he is re-sentenced.

Upon a review of all papers submitted, the undersigned makes the following determination.

Section 23 of Chapter 738 of the Laws of 2004 (Drug Reform Law Act of 2004) permits an individual, who is in the custody of the New York State Department of Correctional Services as a result of being convicted of a class “A-I” felony defined in Article 220 of the Penal law, and sentenced to an indeterminate term of incarceration having a minimum period of not less than fifteen years, to apply for re-sentencing.

In 2005, The New York State Legislature retroactively extended the revised sentencing provisions of the 2004 Drug Reform Act to certain qualified inmates who have been previously convicted of class A-II felonies for crimes involving controlled substances and marijuana. The effective date of the amendment, enacted under Chapter 643 of the Laws of 2005, permitting inmates convicted of the A-II drug felonies to be re-sentenced to a determinate term of imprisonment is October 29, 2005.

To qualify for re-sentencing, the inmate convicted of an A-II drug felony must meet certain criteria. First, the inmate must have been sentenced to a minimum term of imprisonment of at least three years. Second, at the time of his application to be re-sentenced, the inmate must be more than twelve months away from being an “eligible” inmate as that term is defined by subdivision two of section 851 of the New York State Correction Law. That section of the Correction Law defines “eligible inmate” as an inmate who is or will become eligible for conditional release or parole within two years. Read together, these two provisions indicated that an inmate’s application for re-sentencing must be received by the Court more than three years before his parole eligibility date in order for him to qualify for re-sentencing.

Third, the inmate must meet the “merit time” eligibility requirements of paragraph (d) of subdivision one of Section 803 of the New York State Correction Law. That section of the Correction Law states that if, in addition to serving a sentence for an A-II drug offense, an inmate

is also serving a sentence for certain crimes enumerated in the statute, the inmate is ineligible for “merit time.” See *New York State Correction Law section 803 (d)(II)*. Additionally, that section of the Correction Law states that the merit time allowance will be withheld from an inmate for any serious disciplinary infraction. See *New York State Correction Law section 803(d)(iv)*.

A review of the above arguments and the defendant’s application indicated that the defendant does not meet the criteria set forth. On January 11, 2000, the defendant plead guilty to one count of Criminal Sale of a Controlled Substance in the Third Degree, N.Y.S. Penal Law §220.39(1) a class “B” felony. Thereafter, he was sentenced to a negotiated term of incarceration of three (3) to nine (9) years.

The defendant, acknowledges that the sentence imposed by this court is a legally imposed sentence. The defendant further acknowledges that he does not qualify for re-sentencing under the Drug Reform Act having not been convicted of an “A-I” felony. The defendant claims that the Drug Reform Act contains provisions whereby a defendant sentenced to a class “B” drug felony can seek a reduction in his sentence but because of his present incarceration in the Federal Bureau of Prisons, he is prevented from taking advantage of those provisions.

A court having trial jurisdiction (CPL §10.20) does not have the authority to alter a sentence already imposed upon a defendant as a matter of discretion in the interest of justice. Any modification by a trial court must be based on a determination that the sentence was “unauthorized, illegally imposed or otherwise invalid as a matter of law.” C.P.L. §440.20(1), 470.15(3)(c); *People v. Diaz*, 179 Misd. 2d 946, 951 (Co.Ct. N.Y. Co. 1999).

In the matter at hand, the sentence imposed by the undersigned is neither illegally imposed or invalid as a matter of law. Moreover, the defendant acknowledges this fact.

Wherefore, the defendant’s application is denied in its entirety.

The foregoing constitutes the decision and order of the court.



Hon. Ralph T. Gazzillo
Judge of the County Court