SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY : CRIMINAL TERM : PART 44

THE PEOPLE OF THE STATE OF NEW YORK,	Ind. No 5616/2000
-against-	DECISION AND ORDER ON DEFENDANT'S MOTION PURSUANT TO CPL §440.20
EDWIN LORENZO, Defendant.	

MARCY L. KAHN, J.:

By notice of motion dated May 23, 2007, defendant moves to set aside his sentence pursuant to CPL §440.20 on the ground that it has been rendered unauthorized or invalid by the Drug Law Reform Act of 2005[1] ("DLRA-2"). The People oppose the application. For the reasons stated in this opinion, defendant's motion is denied.

The procedural history of this case has been set forth by this court in its prior ruling denying defendant's motion for re-sentencing pursuant to the DLRA-2 (People v. Lorenzo, Ind. No. 5616/00, slip op. [Apr. 7, 2006]["Lorenzo I"]), and will not be repeated at length here. By way of summary, on March 1, 2001, defendant Edwin Lorenzo, charged by indictment with criminal sale of a controlled substance in the first degree (PL §220.43) and other crimes based on an incident which occurred on

---

[1] L. 2005, Ch.643, §1.

August 12, 2000, pleaded guilty before this court to the class A-II drug felony of criminal sale of a controlled substance in the second degree (PL §220.41) in full satisfaction of the indictment. On March 29, 2001, pursuant to the plea agreement and the law then applicable, this court imposed the then-minimum sentence on this twenty year-old first offender of three years-to-life imprisonment, with a recommendation of shock incarceration. Defendant was released from custody and placed on parole on February 9, 2005. The defendant has since been arrested on at least two occasions, and has been incarcerated for violating his lifetime parole in this case.

Seeking to eliminate the maximum life-term portion of his sentence, in 2006, defendant moved unsuccessfully in Lorenzo I for re-sentencing on pursuant to the DLRA-2 and PL §70.71. This court denied defendant's application, on the ground that he did not qualify for relief under DLRA-2, which requires that "in order to be eligible for re-sentencing, an A-II offender may not be eligible for parole within three years." (Lorenzo I, supra, at 4, quoting People v. Bautista, 26 AD3d 230 [1st Dept.], app. dism., 7 NY3d 838 [2006]). At the time he filed his motion, defendant Lorenzo had already been released on parole, rendering him ineligible for re-sentencing under the DLRA-2. (Lorenzo I, supra; see Bautista, supra).

Defendant's instant form motion is not a model of clarity, but the court will construe his claims liberally, due to their pro se nature, and will entertain two arguments.

To the extent that defendant is again seeking re-sentencing pursuant to the DLRA-2 (see People's Memorandum In Opposition to Defendant's Application for Re-sentencing, passim.), he remains ineligible for such relief for the reasons stated by this court in Lorenzo I. (See Bautista, supra). Accordingly, re-sentencing pursuant to the terms of the DLRA-2 is denied.

The central claim advanced by defendant, however, appears to be that because the DLRA-2 in conjunction with its predecessor statute, the Drug Law Reform Act of 2004[2] ("DLRA"), eliminated life sentences for drug offenses, they must have eliminated the lifetime parole aspect of his own sentence. As defendant states it, his present "sentence is unauthorized because there is no longer life parole. . . ." (Defendant's Affidavit In Support of Motion to Set Aside Sentence, at 2).

Although the DLRA in fact eliminated life sentences for class A-I and A-II drug felons, the statute's ameliorative sentencing provisions (PL §70.71) apply only prospectively, to crimes committed after its effective date, rather than retroactively. (People v. Utsey, 7 NY3d 398 [2006]). The changes in the sentencing laws occasioned by the DLRA do not apply to

---

L.2004, Ch.738, §§1-41.

defendant, whose crime was committed prior to the effective date of the 2004 statutory changes to the sentencing structure.

Furthermore, it is by now well-settled that "[a]n ameliorative amendment generally 'cannot be applied in favor of an offender tried and sentenced to imprisonment before its enactment. . . . [O]nce final judgment has been pronounced, a change in the law does not arrest or interfere with execution of the sentence . . . . '" (People v. Utsey, supra, 7 NY3d at 404, quoting People v. Oliver, 1 NY2d 152, 163 [1956], and citing People v. Walker, 81 NY2d 661, 667 [1993]; accord, People v. Rodriguez, -AD3d-, 2007WL1839610 [1st Dept. June 28, 2007]; People v. Quinones, 22 AD3d 218 [2005], lv. den., 6 NY3d 817 [2006]). As defendant Lorenzo was tried and sentenced prior to the enactment of PL §70.71 as part of the DLRA, this principle also bars him from obtaining any sentencing relief from its provisions. Accordingly, his motion must be denied on this ground as well.

For all the foregoing reasons, defendant's motion pursuant to CPL §440.20 to set aside his sentence is denied in its entirety. This opinion constitutes the decision and order of the court.

Marcy L. Kahn, J.S.C.

Dated: New York, New York
July 3, 2007