

People v Deltas

2014 NY Slip Op 30842(U)

March 31, 2014

Supreme Court, Kings County

Docket Number: 3686/76, 349/83, 356/83

Judge: Wayne M. Ozzi

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM PART 17

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

JESUS DELTAS,

Defendant.

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Indictment Nos.
3686/76, 349/83, 356/83
Decision & Order

Ozzi, J.

Defendant moves, Pro Se, for an Order pursuant to the 2005 Drug Law Reform Act (“2005 DLRA”) and Section 440.46 of the Criminal Procedure Law vacating the following sentences: (1) his indeterminate sentence of three years to life incarceration imposed on February 29, 1984 for his conviction of Criminal Sale of a Controlled Substance in the Second Degree, a class A-II drug felony, under Kings County Indictment Number 3686/76; (2) his indeterminate sentence of one to three years incarceration imposed on May 5, 1983 for his conviction of Criminal Sale of a Controlled Substance in the Third Degree, a class B drug felony, under Kings County Indictment Number 349/83; and (3) his indeterminate sentence of one to three years incarceration imposed on May 5, 1983 for his conviction of Criminal Sale of a Controlled Substance in the Third Degree, a class B drug felony, under Kings County Indictment Number 356/83, and resentencing him on the three convictions to determinate sentences in accordance

with Penal Law §§70.70 and 70.71.¹ For the reasons set forth below, Defendant's motion is denied.

Factual Background

On August 24, 1976, in Kings County, Defendant sold over one-half of an ounce of cocaine to another individual. Defendant was arrested and charged with Criminal Sale of a Controlled Substance in the Second Degree, a class A-II drug felony, and other related counts, under Kings County Indictment Number 3686/76.

On January 12, 1983, while the above-referenced case was pending, Defendant was arrested for allegedly selling controlled substances. Defendant was subsequently charged under Kings County Indictment Number 349/83 with Criminal Sale of a Controlled Substance in the Third Degree, a Class B felony. Defendant was also charged with Criminal Sale of a Controlled Substance in the Third Degree under Kings County Indictment Number 356/83.

Defendant appeared in Kings County Supreme Court on May 5, 1983, where he pled guilty to two counts of Criminal Sale of a Controlled Substance in the Third Degree in satisfaction of Indictment Numbers 349/83 and 356/83 and was sentenced to two terms of one to three years incarceration, to run concurrently with one another. (Marrano, J. at Plea and Sentence). Defendant began serving his sentences for the two Criminal Sale of a Controlled Substance in the Third Degree convictions on May 9, 1983.

¹As the People point out in their Opposition to the defendant's motion, in his motion, the defendant fails to clearly articulate whether he is requesting resentencing on all three convictions. However, the People note, and the Court agrees, that in his motion papers, the defendant refers to C.P.L. §440.46, which is applicable to certain enumerated Class B felonies, as well as to the DLRA, which covers certain class A-II felonies. Therefore, for purposes of this decision, the Court will presume that the defendant is seeking relief regarding his sentences for the three convictions listed above.

On February 8, 1984, Defendant pled guilty in Kings County Supreme Court to Criminal Sale of a Controlled Substance in the Second Degree in satisfaction of Indictment Number 3686/76 and was sentenced on February 29, 1984 to an indeterminate term of incarceration of three years to life imprisonment. This sentence was to run concurrently with his sentences for the two Criminal Sale of a Controlled Substance in the Third Degree convictions. (Feldman. J. at Plea and Sentence).

Defendant was first released to parole supervision on the Criminal Possession of a Controlled Substance in the Second Degree conviction on May 13, 1988. Since that time, Defendant's parole has been revoked on numerous occasions. Since his initial release in 1988, he has been re-incarcerated in state prison approximately fifteen times. Defendant was most recently incarcerated, under the name Luis Mendez, on December 12, 2013 following his conviction for Criminal Sale of a Controlled Substance in the Third Degree under New York County Indictment Number 405/2013. Pursuant to that conviction, he is currently serving a determinate sentence of two years imprisonment, to be followed by three years post-release supervision and will be eligible for parole on September 30, 2014.

Conclusions of Law

Chapter 643 of the Laws of 2005 (the "2005 DLRA") grants certain inmates convicted of Class A-II drug felonies the right to move for resentencing provided the defendant meet certain eligibility requirements. Pursuant to Section 1 of the 2005 DLRA, in order for a defendant to be eligible for resentencing in accordance with Penal Law §70.71, the defendant must (1) be in the custody of the Department of Correctional Services; (2) have been convicted of a Class A-II felony defined by section 220 of the Penal Law; (3) have committed the underlying offense prior to October 29, 2005; (4) have been sentenced thereon to an

indeterminate term of imprisonment with a minimum term of not less than three years; (5) 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; and (6) meet the eligibility requirements of paragraph (d) of subdivision 1 of section 803 of the correction law.

The 2005 DLRA affords relief only where the moving defendant 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.” An “eligible inmate” is defined by subdivision 2 of section 851 of the Correction Law as “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.”

Based on the language of the 2005 DLRA and the statutory definition of “eligible inmate,” the Appellate Division, Second Department has held that when a defendant files a motion for resentencing pursuant to the DLRA, the defendant must be more than three years away from his parole eligibility for the conviction for which resentencing is sought. The statute does not apply to an inmate who is already an eligible inmate. People v. Nolasco, 37 A.D.3d 622, 623 (2nd Dep’t 2007), citing People v. Parris, 35 A.D.3d 891, 892 (2nd Dep’t 2006); see also People v. Bautista, 26 A.D.3d 230 (1st Dep’t 2006) (“When read together, the above-referenced statutes require that in order to be eligible for resentencing, an A-II offender may not be eligible for parole within three years.”); People v. Cuebras, 12 Misc.3d 987, 989 (Supreme Ct. Kings Co. 2006). Here, the defendant was released to parole on his A-II felony conviction, the conviction for which resentencing pursuant to the DLRA is sought, in May 1988, having first become eligible for parole on November 15, 1987. Defendant filed the present motion on September 17, 2013. His parole eligibility date with respect to his A-II felony drug conviction has long since passed. Consequently, at the time Defendant filed his motion, he was already an eligible inmate

with respect to the Class A-II felony conviction for which resentencing is sought, and is therefore ineligible to apply for resentencing under the DLRA. See People v. Gonzalez, Ind. Nos. 1836/98 and 3356/98 (Supreme Ct. New York Co. 2006) (Kahn, J.).

Turning to Defendant's convictions for Criminal Sale of a Controlled Substance in the Third Degree, the Court concludes that Defendant has not met the eligibility requirements for resentencing pursuant to C.P.L. §440.46. In order for a defendant to be eligible for resentencing pursuant to C.P.L. §440.46, a defendant must (1) currently be in the custody of the Department of Corrections and Community Supervision; (2) have been convicted of a class B felony offense defined in Article 220 of the Penal Law; (3) have committed the underlying offense prior to January 13, 2006; (4) be serving an indeterminate sentence with a maximum term of more than three years; and (5) not currently be serving a sentence for or have a predicate felony conviction involving an exclusion offense. C.P.L. §440.46; see also People v. Dios, 341 Misc.3d 1241 (A) (Supreme Ct. Bronx Co. 2012).

Here, Defendant was sentenced on both Criminal Sale of a Controlled Substance in the Third Degree convictions to concurrent indeterminate terms of incarceration of one to three years. C.P.L. §440.46 requires that a movant be serving an indeterminate sentence with a maximum term of more than three years. As Defendant's sentences carried maximum terms of three years incarceration, Defendant is ineligible for resentencing under C.P.L. §440.46.

For the reasons set forth herein, Defendant's motion for resentencing is denied. The above constitutes the Decision and Order of the Court.

Dated: March 31, 2014


HON. WAYNE M. OZZI, J.S.C.

