

People v Reeves

2019 NY Slip Op 35267(U)

August 28, 2019

County Court, Westchester County

Docket Number: Docket No. 774s-2015

Judge: Susan M. Capeci

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

- against -

EDWARD REEVES,

Defendant.

-----X
CAPECI, J.,

FILED
SEP - 5 2019
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

**FILED
AND
ENTERED**
ON 9-5 2019
**WESTCHESTER
COUNTY CLERK**

DECISION AND ORDER
Docket #774s-2015

The defendant makes this pro se "motion for modification of term of imprisonment" of the sentence imposed upon him by this Court on August 31, 2016, upon his plea of guilty, to the charge of attempted criminal sale of a controlled substance in the third degree (P.L. 110/220.39 (1)). The defendant was sentenced on that date to a determinate term of 2 years incarceration, with 2 years postrelease supervision, and now seeks to have this court modify his sentence, to allow the sentence imposed to run concurrently with the federal sentence imposed upon him subsequent to the imposition of this sentence.

The People take no position on the motion with respect to the resentence of the defendant to serve his state sentence concurrent with his federal sentence, with credit for time served. The People oppose any present transfer of the defendant to state custody, since he is currently in the custody of the Federal Bureau of Prisons and this Court is without authority to direct his transfer.

The defendant entered a plea of guilty before this Court on September 25, 2015, to attempted criminal sale of a controlled substance in the third degree in consideration of entering the Judicial Diversion program. The matter was then adjourned for multiple compliance dates in diversion. He remained at liberty during this time period.

During the period he was in Judicial Diversion, the defendant was arrested on federal drug charges of conspiracy to distribute narcotics. He was arraigned on those charges on June 7, 2016, in the United States District Court of the Southern District of New York, and was remanded on that date. Due to his arrest in federal court to the drug charges noted above, the defendant was deemed to have violated the terms of the Judicial Diversion program. He was sentenced before this Court on August 31, 2016, upon his prior plea of guilty, to the charge of attempted criminal sale of a controlled substance in the third degree (P.L. 110/220.39 (1)), to a determinate term of 2 years incarceration, with 2 years postrelease supervision. He did not appeal his conviction.

Thereafter, on August 16, 2017, the defendant was sentenced in the United States District Court of the Southern District of New York (Caprioni, J.), upon his plea of guilty, to a term of incarceration of 60 months, with the federal sentence to run concurrently with the state sentence previously imposed by this Court, with credit for time served. The defendant is presently incarcerated, in federal custody.

The defendant's counsel made a request to the federal sentencing Court, by letter dated August 17, 2017, that the defendant be returned to New York State custody, to serve the remainder of any undischarged time of incarceration owed on his New York State sentence in this case, (under Docket #774s-2015) to give effect to the federal court's directive that the federal and state sentences be run concurrently (see Exh. 4,

People's Affirmation). The federal court determined that since the defendant had been sentenced to state charges while being held on initial federal charges, although the federal sentence would be run concurrently with the state sentence, there was no state custody to which he could be "returned" (see Exh. 1, Docket#137, People's Affirmation). Thus, the defendant remained in federal custody.

On this motion, the defendant now seeks to have this court modify his sentence, to allow the sentence imposed in this case to run concurrently with the federal sentence subsequently imposed upon him. In requesting such relief, the defendant notes that the New York State Department of Corrections has lodged a detainer, which indicates "2 years imprisonment consecutive to federal sentence" (see Exh. B, Def. Motion). Since the defendant was in federal custody at the time this Court imposed sentence upon him in this case, he was never received by the New York State Department of Corrections in order to begin serving his state sentence.

As the People aptly point out, since the defendant was never received in the institution named in the commitment, NYSDOCCS, his state sentence has never commenced (CPL 430.20 (1); P.L. 70.30 (2)). Accordingly, there is no bar pursuant to CPL 430.10 to a resentence, in consideration of the fact he was never delivered to NYSDOCCS, and the term of his state sentence has never commenced (see People v Baghai-Kermani, 221 AD2d 219, 220 (1st Dept 1995) [defendant's sentences did not "commence" because he was not incarcerated under the jurisdiction of the State Department of Correctional Services]).

In light of all the circumstances present here, including that it was the original intent that the defendant's federal and state sentence be served concurrently, the

defendant's motion for resentencing is granted. The defendant is hereby resentedenced in this matter to a 2 year determinate sentence, with 2 years postrelease supervision, to run concurrently with his federal sentence of 60 months under Case No. 16-cr-00372 (VEC), with credit for time served. As a result of this resentencing, there is no necessity for the defendant to be transferred to state custody, as his state sentence will be subsumed into his more lengthy federal sentence of 60 months, of which he has already served approximately 3 years and 4 months.

This Decision constitutes the Order of the Court.

Dated: White Plains, New York
August 28, 2019



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A.J.S.C.

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