

People v Hall

2012 NY Slip Op 32557(U)

September 19, 2012

Supreme Court, Kings County

Docket Number: 5614-02

Judge: Jo Ann Ferdinand

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM: PART 45

THE PEOPLE OF THE STATE OF NEW YORK

- against -

CARLOS HALL,

Defendant.

JO ANN FERDINAND, J.

Decision and Order

Ind. No: 5614-02

Dated: September 14, 2012

The defendant moves to be resentenced in accordance with the Drug Law Reform Act of 2009 (DLRA) (L. 2009 Ch. 56, Part AAA, Section 9 [eff. Oct. 7, 2009]; CPL § 440.46). He asks the Court to vacate the indeterminate sentence imposed for his Class B drug felony conviction and resentence him to a reduced determinate prison term. He claims that he is eligible for resentencing in that he was convicted of a qualified crime, received a prison sentence with a maximum of greater than three years and, although he was on parole and not incarcerated at the time of the filing of this motion, he was in custody as specified in the amended statute.

Specifically, he contends that, as the result of a 2011 amendment to the DLRA, persons on parole are "in the custody of the department of corrections and community supervision" and, thus, satisfy the custody condition required to make this application. He further contends that he is the sort of low-level drug offender that the Legislature had in mind when enacting the drug law reforms and should, therefore, benefit from the ameliorative purpose of the statute: to relieve the severity of harsh drug sentences imposed under the old laws.

In opposition, the People contend that the defendant is not eligible to apply for resentencing under CPL § 440.46 because he was at liberty under parole supervision at the time that he made the motion and up to the present time. They argue that the 2011 amendment was

enacted to reflect a merger of two agencies and was not intended to extend resentencing eligibility. In the alternative, the People contend that the defendant's motion should be denied because substantial justice dictates against resentencing.

On January 29, 2003, the defendant entered a plea of guilty to the class B felony of Criminal Sale of a Controlled Substance in the Third Degree. The plea agreement provided that sentence would be deferred while he participated in a residential drug treatment program. If he successfully completed the mandated program, his plea to the felony would be vacated and the charge dismissed. Non-compliance would result in the imposition of an indeterminate term of imprisonment of 5 to 10 years (Gary, J. at plea). At the time of his plea, he was adjudicated a second felony offender based upon three prior felony convictions, and he waived his right to appeal. On August 17, 2005, having failed to complete the mandated drug treatment program despite having several opportunities to do so, this Court sentenced the defendant to an indeterminate term of 4½ to 9 years imprisonment (Ferdinand, J. at sentence). On September 17, 2007, the defendant was released from prison to parole supervision. On January 13, 2011, his parole was revoked and he was incarcerated until February 14, 2011. He has been at liberty under parole supervision since that time, and was on parole at the time this motion was filed.

The defendant acknowledges that under prior case law only incarcerated individuals were permitted to apply for resentencing under the DLRA. CPL § 440.46 clearly required that a person be incarcerated to make such a motion. However, he maintains that the Legislature ended that requirement on March 31, 2011, when it merged the Division of Parole with the Department of Correctional Services to form the "Department of Corrections and Community Services" (DOCCS) (*see* Laws of 2011, Ch. 62). As a result of that merger, the language of CPL §

440.46(1) now provides that “any person in the custody of the department of corrections and community supervision convicted of a class B felony offense . . . may . . . apply to be resentenced . . .” He claims that this merger permits parolees to qualify for a reduction in their sentence because parolees are in the custody of the newly merged DOCCS. This new provision, he contends, negates any requirement that a movant be incarcerated when seeking resentencing.

The People dispute the defendant’s interpretation of the meaning of custody in CPL § 440.46 and contend that he is not eligible to apply for resentencing because he was at liberty in the community when the motion was filed. They contend that the term custody means confinement and that the amendment was not intended to change that meaning to extend resentencing eligibility but, rather, was enacted solely to reflect an administrative, organizational change. In support, the People point to the language of Penal Law § 70.45, which deals with post-release supervision, and provides that “the custody of the department of corrections and community supervision” means that a person is incarcerated at a DOCCS facility rather than under DOCCS supervision in the community. Specifically, PL § 70.45(5)(a) reads, in pertinent part, “upon the person’s release from imprisonment to supervision by the [DOCCS]. . . until the successful completion of the period of post-release supervision or the person’s return to the custody of the [DOCCS], whichever occurs first”(emphasis added). Accordingly, the People contend that custody, as used throughout the statute, means confinement.

The impetus for drug law reform was the legislative determination that the mandatory prison sentences being imposed were excessively harsh when applied to street-level offenders who possessed or sold only small quantities of illegal drugs in order to feed their own addictions. The legislative history demonstrates a belief that these mandated sentences had proven to be

counterproductive: incarceration of low level offenders was exorbitantly expensive, and lengthy periods of imprisonment were likely to discourage an offender's desire to overcome his addiction and become a law-abiding member of society. The DLRA contains a presumption in favor of granting motions for resentencing "unless substantial justice dictates that the application should be denied."¹ Notwithstanding this goal of reducing prison sentences, the Legislature required that in order to *apply* for resentencing a person must demonstrate his eligibility, *i.e.*, that he is in the custody of DOCCS at the time of the filing the resentencing motion (*see generally People v. Overton*, 86 A.D.3d 4 [2nd Dept.2011]).

In the present case, this Court concludes that the defendant has failed to establish his eligibility for resentencing relief because he was not incarcerated at the time his motion was filed. There is a clear distinction between being incarcerated and in custody and being at liberty and under the charge and control of parole supervision (*see People v. Willie Johnson*, Case No. 1155-1998 [Sup. Ct., Kings Cty. August 3, 2012]; *People v. Lankford*, 35 Misc.3d 418 [Sup. Ct., Bronx Cty. Feb. 9, 2012]; *cf. People v. Danton*, 2012 WL 2942338, FN 3 [Sup. Ct., NY Cty. July 18, 2012][Court finds individual who files motion while on parole eligible for resentencing]; *People v. Pomales*, 940 NYS2d 454, 456-458 [Sup. Ct., Bronx Cty. Feb. 17, 2012][same]). The defendant bases his argument upon the language of CPL § 440.46 reflecting the Legislature's merger of the Division of Parole with the Department of Corrections when it enacted Chapter 62 of the Laws of 2011. However, the Legislature made it clear that the purpose of the legislation was to combine the administrations of each agency to achieve fiscal efficiencies and to allow services to be provided on a continuum. The merger was never intended to change the

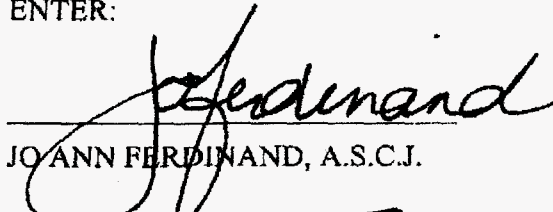
¹ See L. 2004, ch. 738, § 23.

responsibilities of either agency or their personnel. To suggest that this organizational change also impacts on eligibility for resentencing reads far too much into the purpose of the amendment. Based upon the legislative intent expressed in Chapter 62 and considering the arguments presented, this Court finds that the defendant does not satisfy the statutory criteria in that he is not in custody and, therefore, is not eligible for resentencing for this conviction.

Based on the foregoing, the defendant's motion for resentencing pursuant to the DLRA is denied and the indeterminate sentence of four and one-half to nine year previously imposed by this Court remains in effect.

This constitutes the decision and order of the Court.

ENTER:


JO ANN FERDINAND, A.S.C.J.

ENTERED
SEP 19 2012
NANCY T. SUNSHINE
COUNTY CLERK