

People v Mike

2019 NY Slip Op 32652(U)

February 20, 2019

Supreme Court, Onondaga County

Docket Number: 12-0233

Judge: Gordon J. Cuffy

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STATE OF NEW YORK
COUNTY OF ONONDAGA

PART III
SUPREME COURT

THE PEOPLE OF THE STATE OF NEW YORK,

-vs-

Indict #2012-0229-1
Index #12-0233

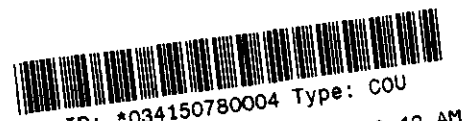
CHRISTOPHER MIKE,

Defendant.

APPEARANCES: WILLIAM J. FITZPATRICK, ESQ.
District Attorney of Onondaga County
NICOLE K INTSCHERT, ESQ
MELINDA H. MCGUNNIGLE, ESQ
Attorneys for the People

CHRISTOPHER MIKE, PRO SE

CUFFY, Gordon J., Presiding


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DECISION/ORDER

On January 14, 2014, Christopher Mike pleaded guilty in this court (Hon. John J. Brunetti, A.J.) to first degree assault (Penal Law §120.10[1]) in exchange for a determinate sentence of ten years in prison followed by two and one half years of post-release supervision. The same day, defendant pleaded guilty to conspiracy to commit a RICO violation in the United States District Court for the Northern District of New York (Mordue, D.J.) in exchange for a concurrent sentence of 97 months in prison. The state sentence was ordered to run "concurrent" with the "federal sentence" and "Nunc Pro Tunc to 2/4/12" (Defendant's Motion. Exhibits 1, 3). Defendant is currently serving his

federal sentence. The current release date for defendant's federal sentence is January 24, 2020.¹ The earliest release date for defendant's state sentence is August 26, 2020.

In February 2018, defendant moved to reduce his sentence in the interest of justice, arguing he would not be able to go to a federal halfway house if returned to New York State upon completion of his federal sentence, and that he and his family had been threatened (Motion for Reduction on Sentence, 2/14/2018). On February 14, 2018, this court denied his request (Letter Decision, 2/14/18).

Defendant has filed a new "Motion for a Sentence Modification" with exhibits, in which he again asks the court to modify his state sentence so that his earliest release date matches that of his federal sentence. In essence, defendant asks the court to reduce his state sentence by six months so that he is not returned to the New York State Department of Corrections (DOCCS) upon his presumptive release date from federal custody. The People oppose any modification of defendant's sentence, but have no objection to this court designating the federal facility for service of defendant's state sentence, assuming the federal authorities will permit him to remain in federal custody. For the reasons that follow, defendant's motion is **DENIED**.

The court has inherent authority to modify or change a sentence where there has been a clerical mistake or error in its imposition (*People v. Stocum*, 143 AD3d 1160, 1163

¹ The "expiration full term date" for defendant's federal sentence is January 2, 2021, but the "projected satisfaction date" is January 24, 2020 (*see* Sentence Monitoring Computation Data, attached to defendant's motion).

[3d Dept 2016]; *People v. McDonald*, 110 AD3d 1490, 1490 [4th Dept 2013], *lv denied* 22 NY3d 1022 [2014]). But “a court cannot, in the guise of correcting an error, change or amend a sentence which is not defective.” (*People v. Minaya*, 54 NY2d 360, 364 [1981]; *see* CPL 430.10 [“Except as otherwise specifically authorized by law, when the court has imposed a sentence of imprisonment and such sentence is in accordance with law, such sentence may not be changed, suspended or interrupted once the term or period of the sentence has commenced”]). As the People correctly note, defendant’s state sentence, ordered to run concurrently to his federal sentence, was authorized, legally imposed, and valid. Accordingly, this court has no authority to modify defendant’s sentence as he requests (*see People v. Jogie*, 118 AD3d 1025, 1026 [2d Dept 2014] [“A trial-level court has no authority under CPL 440.20 to reduce a valid sentence in the interest of justice”], *lv denied* 23 NY3d 1063 [2014]; *People v. Gaston*, 127 Misc2d 1007, 1008-1009 [Bronx Co. 1985]).

In a letter dated January 10, 2019, the People indicated they had no objection to this court issuing an order designating the federal facility (where defendant is currently serving his federal sentence) for service of his state sentence. Such an order would, in theory, result in defendant remaining at his current federal facility after he completes his federal sentence until the earliest state release date in August 2020. It is not at all clear that this court may issue such an order, or that it could be enforced. The Federal Bureau of Prisons (BOP) would be under no legal obligation to follow the order because this

court has no authority over the BOP. Additionally, it is not at all clear what effect such an order, were it enforced, would have on the detainer already lodged against by the New York State Department of Corrections and Community Supervision (DOCCS). In the absence of clear statutory or legal authority to issue an order designating the federal facility as the place of service for defendant's state sentence, the court declines to issue such an order.²

This decision shall constitute the order of the Court.

Dated: 2/20/19


Gordon J. Cuffy
Acting Supreme Court Justice

To: Christopher Mike, pro se
Nicole K. Intschert, Esq.
Melinda H. McGunnigle, Esq.
Clerk of the Court

NOTICE AS TO FURTHER APPEAL

Pursuant to Section 460.15 of the Criminal Procedure Law, the defendant has the right to apply for a certificate granting leave to appeal to an intermediate appellate court. An application for such a certificate must be made in the manner set forth in the rules of the appellate division of this department (see, 22 *NYCRR* 1000.13[o]).

² It is worth noting that DOCCS may well have policies and/or procedures to address the concerns expressed in defendant's motion once he is transferred to their custody.