

To be argued by
MARK W. ZENO
(15 Minutes)

Court of Appeals



State of New York



THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

- *against* -

DAVID LANCE PAULIN,

Defendant-Appellant.

DEFENDANT-APPELLANT'S BRIEF

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November 19, 2010

TABLE OF CONTENTS

TABLE OF AUTHORITIES.	iv
PRELIMINARY STATEMENT	1
QUESTION PRESENTED.	2
STATUTE INVOLVED.	2
JURISDICTION AND REVIEWABILITY.	2
SUMMARY OF ARGUMENT.. . . .	3
STATEMENT OF FACTS.	7
The Guilty Plea & Sentence.. . . .	7
Appellant’s Incarceration On the Class-B Drug Felony.	8
Appellant’s 2009 DLRA Resentence Motion.	8
Appellate Division Proceedings.. . . .	10
ARGUMENT	
POINT	
THE COURT ERRONEOUSLY FOUND APPELLANT INELIGIBLE TO APPLY FOR 2009 DLRA RESENTENCING ON THE GROUNDS THAT HE WAS IN CUSTODY FOLLOWING A PAROLE VIOLATION, WHERE THE PLAIN LANGUAGE OF CPL §440.46 REQUIRES ONLY THAT AN OFFENDER BE IN DOCS CUSTODY ON A CLASS-B DRUG FELONY, AND CONTAINS NO EXCLUSION RELATING TO AN OFFENDER’S PAROLE STATUS (CPL §440.46(1); 2009 DRUG LAW REFORM ACT, LAWS OF NEW YORK 2009, CHAPTER 56, PART AAA, §9).	11
A. CPL §440.46's Plain Language Allows Class-B Drug Offenders In Custody Following Parole Violations to Apply For Resentencing.	13

B.	CPL §440.46(1)'s Plain Language, Which Permits In-DOCS-Custody Parole Violators to Apply for Resentencing, Must Control Because It Is Not Contrary to the Purposes of 2009 DLRA; Rather, It Fulfills the Twin Legislative Purposes of Reducing Overly Harsh Drug Sentences and Returning Discretion to Sentencing Judges..	20
1.	The Collective Effect of the Three DLRA's, and 2009 DLRA in Particular, Demonstrates That the Legislative Intent of Drug Reform Was to Reduce Overly Harsh Sentences, Including Too-long Parole Terms, and Return Sentencing Discretion to Judges; Nothing in Any of the Provisions Suggests That Parole Violators Are Excluded from this Relief..	24
a.	Intent to reduce sentences.	24
b.	Intent to reduce post-incarceration supervised-release.	26
c.	Intent to return sentencing discretion to judges..	28
d.	Intent to exclude violent offenders, but no others..	30
e.	Existence of an early parole termination remedy granted by 2004 DLRA is no proof that 2009 DLRA intended to exclude parole violators.	31
2.	The Legislative History of the Drug Law Reform Acts Confirms That the Two Goals of Ameliorating Overly Harsh Mandatory Punishments and Returning Sentencing Discretion to Judges Were Primary Purposes of the Acts, While Providing No Evidence that the Legislature Intended to Exclude Parole Violators from Sentencing Relief.	33

3. The Statutory Progression from 2004 DLRA Through 2009 DLRA Demonstrates That Allowing In-DOCS-Custody Parole Violators to Apply for Resentencing Is Consistent with the Legislative Intent of 2009 DLRA. 36

CONCLUSION. 46

TABLE OF AUTHORITIES

Federal Cases

United States v. American Trucking Assns.,
310 U.S. 534 (1940) 21

State Cases

1605 Book Center, Inc. V. Tax Appeals
Tribunal of State of New York,
83 N.Y.2d 240 (1994) 23

Doctors Council v. NYC Employees' Retirement Sys.,
71 N.Y.2d 669 (1988) 5, 12, 15, 21

Excellus Health Plan, Inc. V. Serio,
2 N.Y.3d 166 (2004) 22

Finger Lakes Racing Ass'n, Inc. V.
New York State Racing & Wagering Board,
45 N.Y.2d, 471 (1978) 14

Goord v. Guido,
1 N.Y.3d 345 (2004) 16

Johnson v. Hudson Riv. R. R. Co.,
49 N.Y. 455 (1872) 14

Majewski v. Broadalbin-Perth Central School District,
91 N.Y.2d 577 (1998) 13

Matter of Tall Trees Constr. Corp. V Zoning Bd.
Of Appeals of Town of Huntington,
97 N.Y.2d 86 (2001) 4, 13

New York State Bankers Ass'n v. Albright,
38 N.Y.2d 430 (1975) 20, 21

Patrolmen's Benevolent Ass'n of City of New York v.
City of New York,
41 N.Y.2d 205 (1976) 13

People ex rel. Petite v. Follette,
24 N.Y.2d 60 (1969) 17, 18

<u>People v. Ballman,</u> 15 N.Y.3d 68 (2010)	5, 21
<u>People v. Bautista,</u> 7 N.Y.3d 838 (2006)	42
<u>People v. Boyd,</u> 12 N.Y.3d 390 (2009)	34, 35
<u>People v. Buss,</u> 11 N.Y.3d 553 (2008)	18
<u>People v. Day,</u> 73 N.Y.2d 208 (1989)	29
<u>People v. Farrar,</u> 52 N.Y.2d 302 (1981)	29
<u>People v. Figueroa,</u> 27 Misc.3d 751 (NY Co. Sup. Ct. 2010)	5, 29, 39
<u>People v. Graham,</u> 55 N.Y.2d 144 (1982)	14
<u>People v. Kisina,</u> 14 N.Y.3d 153 (2010)	16
<u>People v. Litto,</u> 8 N.Y.3d 692 (2007)	23
<u>People v. Mills,</u> 11 N.Y.3d 527 (2008)	38, 40-43
<u>People v. Pratts,</u> 74 A.D.3d 536 (1st Dep't 2010)	9, 21, 31, 39, 40
<u>People v. Robinson,</u> 95 N.Y.2d 179 (2000)	43
<u>People v. Rodriguez,</u> 68 A.D.3d 676 (2009)	42
<u>People v. Smith,</u> 79 N.Y.2d 309 (1992)	14

<u>People v. Utsey,</u> 7 N.Y.3d 398 (2006)	19
<u>People v. Thompson (Bentley),</u> 60 N.Y.2d 513 (1983)	28
<u>Riley v. County of Broome,</u> 95 N.Y.2d 455 (2000)	20
<u>Sega v. State,</u> 60 N.Y.2d 183 (1983)	13
<u>Sutka v. Conners,</u> 73 N.Y.2d 395 (1989)	22
<u>Uniformed Firefighters Ass’n, Local 94 IAFF, AFL-CIO v. Beekman,</u> 52 N.Y.2d 463 (1981)	21, 22
<u>Williams v. Williams,</u> 23 N.Y.2d 592 (1969)	22

State Statutes

Drug Law Reform Act of 2004, [“2004 DLRA”], L 2004, ch 738.	3, 20, 23, 29-33, 36-37, 42
Drug Law Reform Act of 2005 [“2005 DLRA”], L 2005, ch 643.	3, 24, 37-38, 40-44
Drug Law Reform Act of 2009 [“2009 DLRA”], L 2009, ch 56, pt AAA.	<i>passim</i>
Correction Law §803.	18, 32, 42
Correction Law §851.	42
Correction Law §865(1).	25
CPL §216.00.	24, 25
CPL §216.00(1).	28, 31
CPL §220.10.	28
CPL §440.46.	<i>passim</i>

CPL §450.90(1)..	2
Executive Law 259-j..	6-8, 31, 32
PL §60.01(2) (d)..	25
PL §60.04..	4, 28
PL §60.05(3) [current]..	28
PL §60.05(3) [former]..	24
PL §65.00 [former]..	25
PL §70.00(2) (b) & 3(b)..	25
PL §70.06(3) (b) & (4) (b)..	31
PL §70.70..	8, 25, 26, 31
PL §70.45(2) (b)..	26
Statutes §76..	13
Statutes §94..	13
Statutes §97..	31
Statutes §213..	44
Statutes §321..	25

Other Materials

Bill Jacket Supplement, L 2009 chap 56, Rockefeller Drug Laws, Part AAA, Press Release of Governor Patterson, Additional quote provided by Assemblywoman Helene E. Weinstein..	35
"DOCS Inmate Population Information Search," http://nysdocslookup.docs.state.ny.us/kinqw00	7-8
McKinney's 2004 Session Laws of NY, NYS Assembly, Memorandum in Support of Bill A11895, at p. 2179. . . .	33-34

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Respondent, :

-against- :

DAVID LANCE PAULIN, :

Defendant-Appellant. :

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PRELIMINARY STATEMENT

By permission of the Honorable Eugene F. Pigott, Jr., Judge of the Court of Appeals, granted September 22, 2010 (A.3),¹ appellant appeals from an order of the Appellate Division, First Department, entered June 29, 2010 (A.5), affirming with opinion, an order of the Supreme Court, Bronx County, rendered November 12, 2009, which denied his CPL §440.46 motion for resentencing under the 2009 Drug Law Reform Act (Collins, J.) (A.61-67; 69).

On October 21, 2010, this Court granted appellant's motion for assignment of counsel, assigning Robert S. Dean, Center for Appellate Litigation, to represent him.

No application for a stay of execution of sentence has been made. Appellant is currently serving his sentence.

¹Numbers preceded by "A" refer to pages in the accompanying Appendix.

QUESTION PRESENTED

Whether the court erroneously found appellant ineligible to apply for 2009 DLRA resentencing on the grounds that he was in custody following a parole violation, where the plain language of CPL §440.46 requires only that an offender be in DOCS custody on a class-b drug felony, and contains no exclusion relating to an offender's parole status.

STATUTE INVOLVED

CPL §440.46(1), enacted by L 2009, ch 56, part AAA, §9:

Any person in the custody of the department of correctional services convicted of a class B felony offense defined in article two hundred twenty of the penal law which was committed prior to January thirteenth, two thousand five, who is serving an indeterminate sentence with a maximum term of more than three years, may, except as provided in subdivision five of this section, upon notice to the appropriate district attorney, apply to be resentenced to a determinate sentence in accordance with sections 60.04 and 70.70 of the penal law in the court which imposed the sentence.

JURISDICTION AND REVIEWABILITY

This Court has jurisdiction to hear this appeal because it is an appeal "by ... defendant ... from an[] adverse or partially adverse order of an intermediate appellate court entered upon appeal taken to such intermediate appellate court from an order entered pursuant to section 440.46 of" the Criminal Procedure Law. CPL §450.90(1). The issue raised is reviewable as a question of law, because appellant's eligibility for resentence was preserved by his motion for

resentencing pursuant to CPL §440.46, and ruled upon by the Court.

SUMMARY OF ARGUMENT

In the third and most recent set of Rockefeller Drug Law reforms, the Legislature enacted the 2009 Drug Law Reform Act.² Supplementing an array of sentencing reforms, 2009 DLRA also included CPL §440.46, which gave in-DOCS-custody class-B drug offenders serving indeterminate sentences imposed under the Rockefeller Drug Laws the right to apply for a resentence consistent with the ameliorated sentencing provisions of the reformed laws.

Whether an offender will be resentenced under 2009 DLRA is a two step process: first, the language of the statute defines a limited set of offenders eligible to apply for resentencing (CPL §440.46(1)); and, second, integrating the "substantial justice" standard of 2004 DLRA's resentencing provisions, it is then within the sentencing judge's discretion to decide whether to resentence an eligible offender, and, if so, what resentence to offer and/or impose.

²Throughout this brief, we follow the convention of identifying the three drug law reform acts by the year in which they were enacted, followed by the abbreviation "DLRA." Thus, the first drug law reform act, approved December 14, 2004, becomes "2004 DLRA" (L 2004, ch 738), the second, approved August 30, 2005, "2005 DLRA" (L 2005, ch 643), and the third, approved April 7, 2009, "2009 DLRA" (L 2009, ch 56, pt. AAA),

CPL §440.46(3). This appeal addresses the first of these requirements, i.e., whether appellant, a class-B drug offender returned to Department of Correctional Services ("DOCS") custody following a parole violation to continue serving his indeterminate term, is eligible to apply for resentencing.

Respondent has conceded that appellant was eligible to be resentenced under the plain language of CPL §440.46(1), because he was (1) in DOCS's custody (2) on a class-B drug felony (3) serving an indeterminate sentence with a maximum term of more than three years, (4) committed prior to January 13, 2005, and (5) not subject to exclusion based on a qualifying prior violent felony conviction contained in CPL §440.46(5).

Because courts are required to "give effect" to the "plain meaning" of a statute when its text is "clear and unambiguous," Matter of Tall Trees Constr. Corp. v Zoning Bd. of Appeals of Town of Huntington, 97 N.Y.2d 86, 91 (2001), this eligibility concession under the statute's plain language would appear to compel disposition of the issue in appellant's favor. But respondent has urged the courts to impose another eligibility requirement that appellant did not meet: offenders who have been released from incarceration on their indeterminate sentences to parole, and then reincarcerated

with DOCS following parole violations, respondent contends, are not eligible to be resentenced. The statute's plain language should be overridden, respondent insists, because the Legislature could not have intended parole violators to be eligible to even apply for resentencing. Though supreme court agreed with respondent's interpretation, and the Appellate Division affirmed, other lower courts had sharply disagreed. See, e.g., People v. Figueroa, 27 Misc.3d 751, 778 (NY Co. Sup. Ct. 2010) (finding no exclusion for reincarcerated parole violators).

Because a statute's plain language is the "best evidence" of what the Legislature intended, People v. Ballman, 15 N.Y.3d 68, 72 (2010), its plain language may only be disregarded if it produces an "absurd result contrary to the contextual purpose of the statute." Doctors Council v. NYC Employees' Retirement Sys., 71 N.Y.2d 669, 675 (1988). Since the plain language of CPL §440.46 - by respondent's own admission - contains no parole-violator exclusion, it must be followed unless its application produces a result contrary to the purpose of the statute itself.

A careful analysis the three DLRA's, with particular regard to 2009 DLRA, together with their collective legislative histories, demonstrates that two primary purposes

of drug reform were to reduce overly harsh sentences, including too-long parole terms, and to return sentencing discretion to judges. Permitting in-DOCS-custody parole violators to apply for resentencing furthers, rather than frustrates, these goals. Such an interpretation allows offenders sentenced and suffering under the archaic and unjust Rockefeller Drug Sentencing Laws the possibility, but not the guarantee, of sentencing relief. Once eligible, it then falls within the sentencing judge's discretion to determine whether an offender is deserving of a reduction in sentence consistent with those sentences imposed on offenders today. Nothing in any of the drug law reform provisions, or their legislative histories, suggests that parole violators should be categorically excluded from such relief.

Under the statute's plain language, 2009 DLRA gives all class-B offenders sentenced under the old law an opportunity for sentence reduction. Those continuously in DOCS custody who have not yet reached their minimum term, or, having reached their minimum but not having qualified for discretionary parole, can apply under CPL §440.46 for a shortened sentence. Those on parole can seek a merit discharge after one year, see, Executive Law §259-j(3), and discharge of right after two. See Executive Law §259-j(3-a). Those offenders released

to parole and reincarcerated by DOCS are allowed the opportunity for - not the guarantee of - resentencing, through CPL §440.46. Respondent's interpretation frustrates the unified approach to sentence review established by 2009 DLRA's plain language, and should be rejected.

Accordingly, appellant was eligible to apply for resentencing. The order of supreme court should be reversed, and the matter remitted to supreme court for consideration of the motion's merits.

STATEMENT OF FACTS

The Guilty Plea & Sentence

On October 14, 2003, appellant was convicted of one count of criminal possession of a controlled substance in the third degree (PL § 220.16), and one count of criminal sale of a controlled substance in or near school grounds (PL §220.44) (A.12-13). He was sentenced to a 2-to-6-year indeterminate prison term after failing a drug treatment program. Id.

Both crimes were street-level offenses. He had possessed a street-level quantity of crack on July 6, 2001, and had acted in concert to sell two clear plastic bags of cocaine to an undercover officer on July 20, 2001 (A.23; 49-50).

Appellant's Incarceration On the Class-B Drug Felony

Appellant arrived in DOCS custody on October 22, 2003, with 84 days jail time credit, and was released to parole on July 27, 2005, for a total of 2 years, 7 days' incarceration (A.23).

Appellant was reincarcerated having been found to have violated his parole on three occasions: from March 27, 2006 to May 5, 2006, and from March 5, 2007 to March 26, 2007. His most recent reincarceration began on February 2, 2009, following his guilty plea to attempted harassment, a violation. He was given an 11-month time assessment, and released from DOCS custody on January 15, 2010 (A.51, & n.3; A.52-53; A.64-65; "DOCS Inmate Population Information Search," <http://nysdocslookup.docs.state.ny.us/kinqw00> (navigate to information relating to appellant's custody by entering his DIN 03R5474; last checked, November 19, 2010)).

Appellant's 2009 DLRA Resentence Motion

By motion dated October 7, 2009, appellant moved pursuant to CPL §440.46, for an order resentencing him in accordance with Penal Law §§60.04 and 70.70. Appellant contended that he was eligible for resentencing because he was (1) in the custody of the Department of Correctional Services; and (2) his maximum term of imprisonment under the provisions that

were in effect prior to January 13, 2005 exceeded 3 years. He also contended that he should be resentenced because "substantial justice" did not dictate otherwise (A.15-45).

The People responded that appellant was not eligible to be resentenced because he was in custody due to a parole violation:

It is the People's position that, as the petitioner has finished his original terms of incarceration received under Indictment Numbers 3959/2001 and 5330/2001, any issues regarding present and future supervision and or incarceration must be addressed by the Department of Parole pursuant to Executive Law §295-j [sic, should read 259-j] as newly amended by the Drug Law Reform Act of 2009 (A.48).

Defense counsel responded that, while Executive Law 259-j provided a mechanism for "those who wish to have their parole supervision altered," that power existed before 2009 DRLA's adoption, and "[n]othing in the Executive Law or elsewhere suggests that the Parole Board's power to grant leniency preempts the newly granted express power of the court to resentence under CPL §440.46" (A.58). Since appellant was "eligible for resentencing, and there [we]re no facts that would cause this Court to determine that substantial justice dictates that this application be denied," appellant should be resentenced (A.59).

The court denied appellant's resentencing motion, finding that appellant was ineligible because he was in custody on a parole violation and not the original sentence:

The Court finds that the defendant has served his sentence and has been released to the New York State Division of Parole. Neither the 2009 Act or any [of the] legislature's comments indicate that eligibility ... for resentencing was intended to apply to anyone other than those serving the original sentence. The petitioner is not eligible for resentencing.

This Court finds ... accordingly. The motion is denied (A. 66-67; see also A.69).

Appellate Division Proceedings

Appellant appealed to the Appellate Division, First Department. In a decision dated June 29, 2010, the Appellate Division affirmed the order denying resentencing (A.5). Citing its prior decision in People v. Pratts, 74 A.D.3d 536 (1st Dep't 2010), lv. granted, _ N.Y.3d _ (Jones, J.) (October 1, 2010), the First Department found that appellant was not eligible to apply for resentencing because he had previously been "released from custody on his drug conviction," and was in custody because he had been "reincarcerated for a parole violation." Pratts had held that DLRA-3 "was not intended to apply to those offenders who have served their term of imprisonment, have been released from prison to parole

supervision, and whose parole is then violated, with a resulting period of incarceration" (A.5).

ARGUMENT

POINT

THE COURT ERRONEOUSLY FOUND APPELLANT INELIGIBLE TO APPLY FOR 2009 DLRA RESENTENCING ON THE GROUNDS THAT HE WAS IN DOCS CUSTODY FOLLOWING A PAROLE VIOLATION, WHERE THE PLAIN LANGUAGE OF CPL §440.46 REQUIRES ONLY THAT AN OFFENDER BE IN DOCS CUSTODY ON A CLASS-B DRUG FELONY, AND CONTAINS NO EXCLUSION RELATING TO AN OFFENDER'S PAROLE STATUS (CPL §440.46(1); 2009 DRUG LAW REFORM ACT, LAWS OF NEW YORK 2009, CHAPTER 56, PART AAA, §9).

As part of the 2009 Drug Law Reform Act - the third and most recent phase of Rockefeller Drug Law reform - the Legislature enacted CPL §440.46, giving in-DOCS-custody class-B drug offenders serving old-law indeterminate sentences the right to apply for resentencing. As explained in Subpoint A, below, respondent has conceded that the plain language of §440.46's contains no eligibility exclusion for offenders returned to DOCS's custody to continue serving their indeterminate sentence following a parole violation. Respondent has nonetheless urged such an exclusion, and the First Department has imposed one. The statute's plain language should be disregarded, it is contended, because the Legislature could not have intended parole violators to be eligible to apply for resentencing.

This is not a case where the Court is called upon to interpret an ambiguous statute by weighing conflicting evidence of legislative intent. Respondent's intuition as to legislative intent aside, a statute's unambiguous language may only be overridden if it produces an "absurd result contrary to the contextual purpose of the statute." Doctors Council v. NYC Employees' Retirement Sys., 71 N.Y.2d 669, 675 (1988). In Subpoint B, we demonstrate that the two central and consistent purposes of drug law reform were to reduce the draconian mandatory sentences imposed by the Rockefeller Drug Laws, and to return sentencing discretion to the hands of judges.³ Nowhere has the Legislature signaled that this relief excludes in-DOCS-custody parole violators.

Respondent has conceded that no such intent can be found in the legislative history. Far from producing an absurd result at odds with the legislative intent, a plain language application of the statute not only comports with these complementary goals, but also substantially furthers them. Respondent cannot meet his burden of showing that a plain-language application of the statutory text produces a result

³The third primary purpose - a shift from punishment model for drug offenses to treatment and rehabilitation - while not directly implicated by the parole violator eligibility exclusion, is entirely consistent with the plain language interpretation of CPL §440.46(1) that we advocate here.

contrary to the purposes of the statute. The plain language must be followed. Accordingly, since appellant was eligible to apply for resentencing, the order of supreme court should be reversed, and the matter remitted to supreme court for consideration of the motion's merits.

A. CPL §440.46's Plain Language Allows Class-B Drug Offenders In DOCS Custody Following Parole Violations to Apply For Resentencing.

The goal of statutory interpretation is to "effectuate the intent of the Legislature." Patrolmen's Benevolent Ass'n of City of New York v. City of New York, 41 N.Y.2d 205, 208 (1976). "[T]he clearest indicator of legislative intent" is the statute itself. Majewski v. Broadalbin-Perth Central School District, 91 N.Y.2d 577, 583 (1998). Where its language is "clear and unambiguous, courts must give effect to its plain meaning." Matter of Tall Trees Constr. Corp. v Zoning Bd. of Appeals of Town of Huntington, 97 N.Y.2d 86, 91 (2001); accord, Statutes §76 ("[w]here words of a statute are free from ambiguity and express plainly, clearly and distinctly the legislative intent, resort may not be had to other means of interpretation"); Statutes, §94 ("[t]he language of an enactment should be given its plain meaning ... and [a] court should neither limit nor extend plain language"); cf. Segal v. State, 60 N.Y.2d 183, 191 (1983) ("[w]hile legislative intent

is the great and controlling principle ..., it should not be confused with legislative history, as the two are not coextensive. Inasmuch as the legislative intent is apparent from the [statutory] language..., there is no occasion to consider the import, if any, of the legislative memorandum").

Courts must abide by the Legislature's intent as expressed by its chosen words:

If ... the terms of a statute are plain and within the scope of legislative power, it declares itself and there is nothing left for interpretation. To permit a court to say that the law must mean something different than the common import of its language would make the judicial superior to the legislative branch of government and practically invest it with lawmaking power.

Finger Lakes Racing Ass'n, Inc. V. New York State Racing & Wagering Board, 45 N.Y.2d, 471, 480 (1978), citing, Johnson v. Hudson Riv. R. R. Co., 49 N.Y. 455, 462 (1872); see, People v. Smith, 79 N.Y.2d 309, 311 (1992) (it is not the function of a court "to pass on the wisdom of a statute or any of its requirements, but rather to implement the will of the Legislature as expressed in its enactment"); People v. Graham, 55 N.Y.2d 144, 149-50 (1982) (judge, who was executive director of State Commission that drafted CPL provision, was not free to ignore statute's plain language which he believed "the legislature never could have intended").

As respondent conceded in his brief to the First Department, "the Legislature has not expressly stated, by way of the actual legislation ... that the resentencing provisions of CPL §440.46 are not available to those parolees reincarcerated after violating their parole." Resp. AD Brf., at 12. In other words, it is undisputed that CPL §440.46(1)'s plain language contains no exclusion for those incarcerated following parole violations.

By its terms, section 440.46(1) allows defendants to apply for resentencing if they are (1) in DOCS custody (2) on a class-B drug felony (3) serving an indeterminate sentence with a maximum term of more than three years, (4) committed prior to January 13, 2005, and (5) not subject to exclusion based on a qualifying prior violent felony conviction:

Any person in the custody of the department of correctional services convicted of a class B felony offense defined in article two hundred twenty of the penal law [drug offenses] committed prior to January thirteenth, two thousand five, who is serving an indeterminate sentence with a maximum term of more than three years, may, except as provided in subdivision five of this section [relating to convictions for exclusion offenses]... apply to be resentenced to a determinate sentence.

Where, as here, the Legislature expresses its intent as to eligibility with "critical eligibility words" of inclusiveness like "any" or "all," a court may not override that expression of intent by resort to extrinsic evidence of a

contrary legislative intent. Doctors Council v. NYC Employees' Retirement Sys., 71 N.Y.2d 669, 675-76 (1988). In Doctors Council, where an eligibility provision began with the phrase "all persons," and that language was "nowhere limited or qualified" in the statute, this Court found resort to extrinsic factors to create an exclusion based upon the Legislature's intent was forbidden. Id. Similarly, in Goord v. Guido, 1 N.Y.3d 345, 348-49 (2004), where the eligibility provision began with the phrase "in any case," the Court set aside a judicially created exclusion grounded in legislative intent notwithstanding a "robust" 20-year-long Appellate Division line of authority which had gained "widespread acceptance." The Court found that the language, "[i]n any case means in any case, and we cannot conclude that by saying "any" the Legislature meant some and not others" [emphasis in original]. See also People v. Kisina, 14 N.Y.3d 153, 158-59 (2010) (where Penal Law provision extended liability to a "person" with requisite intent, court would not read in limitation on types of persons who fell within crime's reach, because plain language "proscribe[d] no limitation").

Here, the resentencing statute's "critical eligibility" phrase is "any person." Except for the express qualifications in the statute relating to custody, class of offense, date of

offense, and exclusion offenses, that phrase does not permit limitation. The Legislature's "any person" language is a plain statement of legislative intent that any person not expressly excluded is eligible to apply for resentencing. Since the phrase "any person in the custody of the department of correctional services convicted of a class B felony offense" is not limited by whether or not that custody followed a parole violation, the legislative intent expressed in the plain words of the statute may not be overridden.

That appellant here had not been continuously in custody on the indeterminate sentence does not render him any less "in custody ... serving an indeterminate sentence." CPL §440.46(1). Supreme court found that appellant was not eligible for resentencing because, although he was in custody at the time the motion was filed and decided, he was no longer "serving the original sentence" (A.66-67; 69). For good reason respondent abandoned this distinction as a basis for an eligibility exclusion in the Appellate Division. A defendant's indeterminate sentence is not separated into an original sentence, which precedes release to parole, and a separate portion which follows parole release. People ex rel. Petite v. Follette, 24 N.Y.2d 60, 62-63 (1969) (an indeterminate sentence "continues to run until its maximum term has expired,"

regardless of whether defendant is released to parole and/or reincarcerated for violating that parole [citations omitted; emphasis added]). A parole violator, like appellant, who is returned to DOCS custody after having been found to have violated the terms of his release is still serving his "original" indeterminate sentence. An indeterminate sentence begins upon imposition, and runs until its maximum expiration. Release to parole and reincarceration for a parole violation does not change this. Id.; see, People v. Buss, 11 N.Y.3d 553, 558 (2008) (a defendant returned to prison after parole release continues to be subject to his sentence for its duration for SORA purposes). Thus, supreme court erred by holding appellant ineligible because he was no longer serving his "original" sentence.

That the Legislature's plain language reflects a deliberate choice not to exclude from eligibility offenders returned to custody following parole violations, rather than an inadvertent omission, is demonstrated by the words of the enabling legislation itself. In a different section of the same session law chapter in which 2009 DLRA was enacted (L 2009, ch 56, Part AAA), the Legislature made a limited credit time allowance available to designated persons "under the custody of the department" (L 2009, ch 56, Part L, §4,

amending Correction Law § 803-b(1)(a)). But the Legislature specifically excluded those returned to custody following parole violations. Correction Law §803-b(1)(b)(ii)(C) ("an inmate shall not be eligible for the credit defined herein if he or she is returned to the department pursuant to a revocation of presumptive release, parole, conditional release, or post-release supervision and has not been sentenced to an additional indeterminate or determine term of imprisonment").

Thus, the Legislature was demonstrably aware that there might be reasons to treat offenders in custody serving indeterminate prison terms following parole violations differently - more harshly, even - than those continuously in custody since the date of sentencing. But the Legislature chose not to exclude them from resentencing eligibility. That the Legislature expressly excluded those in custody for parole violations from earning limited credit time allowances, but in the same chapter chose not to include a similar exclusion for resentencing eligibility, means that the absence of such an exclusion was a deliberate choice, not accidental.

The plain language of 2009 DLRA states that individuals in DOCS's custody serving an indeterminate sentence for a class-B drug offense committed before January 13, 2005 may

apply for resentencing. It leaves no room to exclude those returned to custody following a parole violation. People v. Utsey, 7 N.Y.3d 398, 404 (2006) (relying on the “plain language” of 2004 DLRA to determine that sentencing reforms were not to be applied retrospectively). Since appellant was in custody serving his indeterminate sentence for a class-B drug felony committed before January 13, 2005, and had committed no exclusion offense, he was eligible to apply for resentencing under the plain language of CPL §440.46.

B. CPL §440.46(1)'s Plain Language, Which Permits In-DOCS-Custody Parole Violators to Apply for Resentencing, Must Control, Because It Is Not Contrary to the Purposes of 2009 DLRA; Rather, It Fulfills the Twin Legislative Purposes of Reducing Overly Harsh Drug Sentences and Returning Discretion to Sentencing Judges.

Even where the words of a statute appear unambiguous, courts may take legislative intent into account. New York State Bankers Ass'n v. Albright, 38 N.Y.2d 430, 436-37 (1975), see, Riley v. County of Broome, 95 N.Y.2d 455, 463-64 (2000) (“[a]s a general rule, unambiguous language of a statute is alone determinative Nevertheless, the legislative history of an enactment may also be relevant and is not to be ignored, even if words be clear” [internal quotations and citations omitted]). But only where the statute’s plain language would produce results contrary to the purpose of the

legislation as a whole may a court override plain language in favor of its own intuition of legislative intent:

Consideration of extrinsic factors is impermissible where the Legislature's direction is clear; where the statute is not ambiguous when read in context; where the plain meaning of the statute would not lead to "'absurd or futile ...'" or even unreasonable results "' plainly at variance with the policy of the legislation as a whole.'"

Doctors Council v. NYC Employees' Retirement System, 71 N.Y.2d at 675, quoting New York State Bankers Assn. V. Albright, 38 N.Y.2d 430, 437 (1975), quoting United States v. American Trucking Assns., 310 U.S. 534, 543-44 (1940); see, Uniformed Firefighters Ass'n, Local 94 IAFF, AFL-CIO v. Beekman, 52 N.Y.2d 463, 471 (1981) (court may look to extrinsic factors when "literal reading ... would frustrate the statutory purposes").

Before the First Department, respondent urged, and the court agreed, that the plain language of CPL §440.46(1) should not be followed. By respondent's reckoning, defendants returned to custody after violating parole are not eligible to apply for resentencing, because the Legislature could not have intended them to be eligible. See, e.g., Resp. AD Brf., at 10 ("[s]uffice it to say that the Legislature did not intend for those who cannot abide by the law to benefit from their misconduct"); People v. Pratts, 74 A.D.3d 536 ("[t]here is no

reason to believe that the Legislature intended parole violations to trigger resentencing opportunities"). Respondent and the First Department are wrong. First, as we have shown, in Subpoint A, the statute's plain language is the "best evidence" of what the Legislature intended. People v. Ballman, 15 N.Y.3d 68, 72 (2010) It contains no parole-violator exclusion and must be followed absent an absurd or unreasonable result. Second, even if this Court finds it necessary or appropriate to look beyond CPL §440.46's plain language, a court may only disregard unambiguous statutory language if that language produces a result contrary to the purpose of the statute itself. As shown below, the First Department was wrong to read a resentencing-eligibility exclusion into CPL §440.46, because allowing in-DOCS-custody parole violators to apply for resentencing furthers, rather than frustrates, the Legislature's intent as expressed by the statute.

When a court considers extrinsic aids beyond the plain language of a statute to discern legislative intent, it may look to a variety of sources, beginning with the "spirit and purpose of the legislation." Sutka v. Conners, 73 N.Y.2d 395, 403 (1989); see, Williams v. Williams, 23 N.Y.2d 592, 598 (1969) ("[i]n implementing a statute, the courts must of

necessity examine the purpose of the statute...."); Excellus Health Plan, Inc. v. Serio, 2 N.Y.3d 166, 172 (2004) (interpretations must accommodate statute's "overall purpose"). Next, courts should consider the statute's legislative history, see, Uniformed Firefighters, 52 N.Y.2d 463, 471-72 (1981), and "the course of the legislation on the subject." People v. Litto, 8 N.Y.3d 692, 697 (2007) (reviewing the development of driving-while-intoxicated statutes to determine whether Legislature intended to limit intoxication to "disordered state of mind caused by alcohol alone," or drugs as well). While courts are also free to consider rules of statutory construction, these axioms are often of limited usefulness, because their generalities frequently "neutralize one another." 1605 Book Center, Inc. V. Tax Appeals Tribunal of State of New York, 83 N.Y.2d 240, 244-45 (1994), citing, 3A Sutherland, Statutory Construction § 66.01, at 11 [Singer 4th ed].

The terms of 2009 Drug Law Reform Act as a whole, together with the two prior Drug Law Reform Acts, their collective legislative histories, and the progression of drug law reform from 2004 DLRA through 2009 DLRA, demonstrate that two signal purposes of drug law reform were to ameliorate the overly harsh mandatory punishments fixed by the failed

Rockefeller Drug Sentencing Laws and to return sentencing discretion into the hands of judges. Both purposes are furthered by allowing in-DOCS-custody parole violators to apply for resentencing, and frustrated by respondent's contrary interpretation. Nothing remotely conflicts with allowing parole violators to apply for resentencing, the result mandated by the statute's plain language.

1. The Collective Effect of the Three DLRA's, and 2009 DLRA in Particular, Demonstrates That the Legislative Intent of Drug Reform Was to Reduce Overly Harsh Sentences, Including Too-long Parole Terms, and Return Sentencing Discretion to Judges; Nothing in Any of the Provisions Suggests That Parole Violators Are Excluded from this Relief.

The operative provisions of the three Drug Law Reform Acts powerfully evidence the Legislature's intent to replace the harsh, mandatory sentences of the Rockefeller Drug Laws.

- a. Intent to reduce sentences.

The DLRA's have drastically reduced sentences for low-level non-violent drug offenders. For example, a class-B drug offender, with no prior felony convictions, like appellant, faced mandatory imprisonment under the Rockefeller Drug Laws, see former PL §60.05(3), except under highly unusual circumstances.⁴ Such an offender previously faced a minimum

⁴Lifetime probation was permitted only where defendant provided material assistance to authorities in connection with a drug felony, and only with the District Attorney's consent. Former PL

(continued...)

indeterminate prison sentence of 1 to 3 years, and a maximum of 8½ to 25 years. PL §70.00(2)(b) & 3(b).

Under the reformed drug laws, judicial diversion with no imprisonment is the norm (CPL §216.00), and probation (PL §70.70(2)(c)), definite jail sentences (PL §70.70(2)(b)), split sentences (PL §60.01(2)(d)), and shock incarceration (Correction Law § 865(1)), are all available alternatives for a first-time offender. Even non-violent second offenders do not face mandatory imprisonment. CPL §216.00. When a defendant is sentenced to incarceration, the terms have been drastically reduced. A first-felony class-B drug offender can receive a definite sentence of less than 1, or a minimum determinate sentence of 1 or 2 years (depending on whether he's been charged with criminal sale in or near school grounds), with a 9-year maximum. PL §§70.70(2)(a)(i).

Self-evidently, permitting offenders sentenced under the overly harsh superseded sentencing laws to apply to be resentenced under the sentencing rubric applicable today furthers these ameliorative goals. A defendant convicted of street-level sale today faces an entirely different punishment landscape than appellant faced when he offended in 2001. 2009 DLRA's resentencing provisions are designed to correct

⁴(...continued)
§65.00(1)(b).

this unfairness, by allowing in-DOCS-custody offenders sentenced under the old law entrée to sentencing reform. Cf. Practice Commentary to Statutes §321 ("remedial statutes ... are liberally construed ... to spread their beneficial result as widely as possible").

- b. Intent to reduce post-incarceration supervised-release.

Drug law reform not only reduced periods of incarceration, but also eliminated lengthy terms of post-incarceration supervised release. A class-B first offender faces a maximum 2-year period of post-release supervision. PL §70.45(2)(b). That the Legislature set 2 years as the maximum period of post-release supervision a class-B first offender should face speaks eloquently to the parole-violator issue. The Legislature not only rejected long sentences for non-violent street-level drug offenders, but also repudiated long periods of supervision - with the threat of reincarceration - for releasees. While a class-B first-felony drug offender potentially faced more than a decade of parole after release from prison under the Rockefeller Drug Laws, the current law caps the maximum period of post-release supervision for such a defendant at 2 years. The Legislature unmistakably intended not only to reduce prison sentences, but parole terms as well.

Individuals released on parole and then returned to prison after violating the conditions of their parole are no less casualties of the failed Rockefeller Drug Laws whom 2009 DLRA, with its far-reaching provisions, would want to reach. With the Rockefeller Drug Laws' emphasis on punishment rather than treatment, it hardly surprises that individuals whose institutional records and criminal backgrounds supported their release to parole nonetheless failed to succeed once released. 2009 DLRA should not exclude these individuals from its ambit. Reducing their sentences and diverting them to drug treatment programs upon release is entirely consistent with the treatment and cost-saving policies that specifically underlie 2009 DLRA and motivated its enactment.

If CPL §440.46 prohibited resentencing of re-incarcerated parole violators, some of the most deserving inmates would be denied relief. For instance, it would deny resentencing relief to those inmates paroled due to good behavior while in prison, but returned to DOCS custody on an eligible class-B felony owing to a technical parole violation. Perversely, an inmate whose poor disciplinary record prevented early release remains indisputably eligible to be resentenced under 2009 DLRA. Construing the statute to deny eligibility to the technical

parole violator but not the inmate never approved for release in the first place would be absurd and unjust.

- c. Intent to return sentencing discretion to judges.

The Drug Law Reform Acts also return sentencing discretion to judges. Under prior law, imprisonment was mandatory for all defendants convicted of class-B drug felonies, regardless of whether they had prior felony convictions, see, former PL §60.05(3), unless the prosecutor agreed to a reduction of the charges. See People v. Thompson (Bentley), 60 N.Y.2d 513, 518-19 (1983) (CPL §220.10 requires consent of prosecutor before a defendant is allowed to enter a plea to less than the entire indictment or a lesser included offense). Under the reformed drug laws, subject to exclusions for prior violent offenses, the sentencing judge has the discretion to order judicial diversion for class-B drug offenders, even those with prior felony convictions. CPL §216.00(1). The sentencing judge also has the discretion to impose a definite sentence of less than one year, or probation. PL §60.04(3).

Permitting in-DOCS-custody parole violators to apply for resentencing advances the Legislature's intent to return sentencing discretion to judges. We do not contend that a defendant's status as a parole violator is irrelevant to the

question of whether he should be resentenced, or, if resentenced, to what resentence should be imposed. Rather, we contend that parole-violator status does not render offenders *ineligible to apply for resentencing*. As an eligible offender, it is a matter of the sentencing judge's discretion - measured by the substantial justice standard - whether to resentence, and if a resentence is offered, what that resentence should be. See, CPL 440.46(3) incorporating by reference the 2004 DLRA's "substantial justice" standard (L 2004, ch 738, §23).

Placing sentencing discretion in the hands of judges was not only a primary goal of drug law reform, but judicial sentencing discretion has always been the centerpiece of New York's statutory sentencing scheme. It should not be disregarded lightly. People v. Day, 73 N.Y.2d 208, 212 (1989) (it is an "overarching principle" that "sentencing courts, in the exercise of their unique judicial function in criminal proceedings, are wisely allocated wide latitude as they are recognized to be in a superior position to dispense proportionate and fair punishment"). As this Court has explained, the sentencing court's "superior position," id., reflects both its unsurpassed access to the facts necessary to render a fair determination, and its assigned role as judge of those facts. People v. Farrar, 52 N.Y.2d 302, 305-06 (1981);

see, People v. Figueroa, 27 Misc.3d 751, 778 (NY Co. Sup. Ct. 2010) (finding no exclusion for parole violators, because, among other reasons, "the Legislature, in crafting the 2009 DLRA, wrote a detailed statute which gave courts the discretion to make reasoned judgments and created an adjudicatory process the Legislature deemed fair to both prosecutors and criminal defendants. Given this carefully considered legislative design, it is difficult to understand why the judiciary would impose categorical limitations on its own discretion which the Legislature did not create").

Allowing in-DOCS-custody parole violators to apply to be resentenced furthers the Legislature's stated goal of returning sentencing discretion to judges.

- d. Intent to exclude violent offenders, but no others.

The three DLRA's, and 2009 DLRA in particular, do demonstrate a legislative intent to exclude at least one class of offenders from the reform's ameliorative effects, namely, drug offenders with prior or concurrent violent convictions. That the Legislature has singled out one category of offender for exclusion from eligibility for reduced sentences, but has said nothing in 2009 DLRA about parole status, compels the inference that it did not intend to exclude parole violators from the possibility of relief. While 2004 DLRA drastically

reduced the sentences for non-violent offenders, and gave judges the discretion to spare non-violent offenders from prison, offenders with violent histories received no succor. A second felony drug offender whose prior felony conviction was a violent felony faces mandatory imprisonment, see, PL §70.70(4)(b), with a minimum determinate 6-year sentence, see, PL §70.70(4)(b)(i), representing an increase over prior law, with its 4½-year minimum term. See, PL §70.06(3)(b) & (4)(b).

2009 DLRA's exclusions, too, are for prior violence. This is true in the resentencing provisions, see, CPL §440.46(5), as well as the judicial diversion provisions, see, CPL §216.00(1), which parallel CPL §440.46's exclusions, adding only prior conviction of a class-A drug offense. As a statute "is to be construed as a whole" to determine legislative intent, Statutes §97, the consistent emphasis on violence as the exclusion feature reinforces that violence - and not a non-violent drug offender's violation of parole - raises the only eligibility bar.

- e. Existence of an early parole termination remedy granted by 2004 DLRA is no proof that 2009 DLRA intended to exclude parole violators.

Respondent has argued, and the First Department found in Pratts, that the early-parole-termination remedy of Executive Law §259-j(3-a), added by 2004 DLRA, is the exclusive

sentence-reduction remedy available to drug offenders once they are released to parole. Nothing in CPL §440.46, the Executive Law, or elsewhere, even hints that early parole termination was intended to preempt CPL §440.46's resentencing remedy. To the contrary, the DLRA's offer a range of overlapping remedial measures. For example, with the enactment of 2004 DLRA, the Legislature provided that felony drug offenders sentenced to indeterminate sentences became eligible to earn an additional one-sixth merit time reduction off their sentences. See L. 2004, ch. 738, § 30; Correction Law §803[1][d]. Offenders become eligible for sentence reductions by participating in correctional programs, and refraining from prohibited behaviors. Id. The merit-time-sentence-reduction remedy complements judicial remediation of old-regime sentences. Neither preempts the other.

The same result should obtain with the early-parole-termination remedy, i.e., it is not the exclusive sentence-reduction remedy for those offenders once they have been released to parole. Rather, the early-parole-termination provisions and the CPL §440.46 are complementary remedies. These complementary remedies reveal the Legislature's intention to extend at least the possibility of relief to all non-violent drug offenders. As a non-violent drug offender who violates parole (sometimes for nothing more serious than a

curfew violation) becomes ineligible for early termination under Executive Law §259, the Legislature intended an individual to at least be considered for resentencing under CPL §440.46.

2. The Legislative History of the Drug Law Reform Acts Confirms That the Two Goals of Ameliorating Overly Harsh Mandatory Punishments and Returning Sentencing Discretion to Judges Were Primary Purposes of the Acts, While Providing No Evidence that the Legislature Intended to Exclude Parole Violators from Sentencing Relief.

Respondent has conceded that "the Legislature has not expressly stated, by way of the actual legislation or its history, that the resentencing provisions of CPL §440.46 are not available to parolees reincarcerated after violating their parole." Resp. AD Brf. at 12. The legislative history contains no express language about parole-violator resentencing eligibility. But what it does say fully supports allowing offenders returned to custody following parole violations to apply for resentencing.

Initiating drug law reform in 2004, the Legislature stated that New York's then extant drug laws "provide[d] inordinately harsh punishment for low level non-violent drug offenders, warehouse[d] offenders in state prison who could more productively be placed into effective drug treatment programs, and waste[d] valuable state tax dollars which could be used more effectively to provide drug treatment to addicts

...." McKinney's 2004 Session Laws of NY, NYS Assembly, Memorandum in Support of Bill A11895, at p. 2179. Legislators cited 2004 DLRA as "an important first step towards reforming" the Rockefeller Drug Laws. Id. Only a first step, legislators explained, because it did not, among other things, give judges "discretion to decide whether or not to send non-violent low level addicted offenders" to treatment rather than prison. Id. Enhancing "judicial discretion and other changes would ... eliminate the injustices of the Rockefeller laws," id., but those changes would have to wait for future reforms.

After the limited relief granted to class-A-II drug offenders by 2005 DLRA, the promise of further substantial reform was realized with 2009 DLRA. Governor Paterson's press release announcing the 2009 Drug Law Reform Act, subtitled, "Sweeping Reform Ends Harsh Sentences for Non-violent Addicts," recognized that the new reforms not only eliminated harsh sentences "mandated" by the Rockefeller Drug Laws, but gave judges "total authority to divert non-violent addicts to treatment...." Press Release, "Governor Paterson and Legislative Leaders Announce Three-Way Agreement to Reform New York State's Rockefeller Drug Laws" (March 27, 2009), available at http://www.ny.gov/governor/press/press_0327091.html; see, People v. Boyd, 12 N.Y.3d 390, 394 (2009) (citing Governor's Approval Memorandum as evidence of

Legislature's intent). In his statement, Governor Paterson focused on the fact that the act returned discretion to judges, "I have been fighting to overhaul the drug laws and restore judicial discretion in narcotics cases since I began my career in public service," and "I have seen too many lives destroyed by outrageously harsh and ineffective mandatory sentencing laws." Id.; see also, Bill Jacket Supplement, 2009 Chapter 56, Rockefeller Drug Laws, Part AAA, Press Release of Governor Patterson, Additional quote provided by Assemblywoman Helene E. Weinstein ("Judicial discretion has always been one of the core principles for which the Assembly has fought").

The unambiguous statutory history thus confirms that two significant goals of drug law reform were sentence reduction and placing sentencing discretion in the hands of judges. Allowing class-B drug offenders returned to prison following parole violations to apply for resentencing furthers both these primary goals. Not only is the statute's plain language perfectly consistent with this legislative history, but nowhere does the legislative history suggest that those returned to custody on parole violations should be ineligible to apply for resentencing. The legislative history thus supports the plain language of CPL §440.46.

3. The Statutory Progression from 2004 DLRA Through 2009 DLRA Demonstrates That Allowing In-DOCS-Custody Parole Violators to Apply for Resentencing Is Consistent with the Legislative Intent of 2009 DLRA.

The evolution of Rockefeller Drug Law reform's resentencing-eligibility provisions reflect a legislative triage of judicial resources, extending the right to ask for resentencing to those most harmed by the old laws' unfairness, while addressing those harmed in order of need. Since in-DOCS-custody parole violators are among those harmed by the drug laws, extending them eligibility to apply for resentencing is consistent with the purpose of the reforms. Moreover, the evolution of drug reform's eligibility provisions reflects that the decision to include reincarcerated parole violators was deliberate and not inadvertent.

The Legislature began its reform of the drug laws by offering resentencing relief to those most harmed by the old sentencing laws. 2004 DLRA offered all in-DOCS-custody class-A-I offenders with their 15-year minimums and life maximums the right to apply for resentencing.⁵ By including an in-DOCS-

⁵The 2004 DLRA resentencing eligibility provision provided:

... [a]ny person in the custody of the department of correctional services convicted of a class A-I felony offense defined in article 220 of the penal law which was committed prior to the effective date of this section, and sentenced thereon to an indeterminate term of imprisonment with a minimum period not less than fifteen years pursuant to provisions of law in effect prior to

(continued...)

custody requirement, the Legislature assured that, even among those serving class-A-I sentences, only those actually suffering imprisonment had a right to apply for resentencing.

Next, with 2005 DLRA, the Legislature progressed to class-A-II offenders with their shorter minimums but life maximums.⁶ While 2004 DLRA's resentencing-eligibility provisions required only that defendant be a person in the custody of the department of correctional services convicted of a class-A-I felony drug offense, 2005 DLRA added a specific eligibility exclusion based on defendant's parole eligibility.

⁵(...continued)

the effective date of this section, may ... apply to be resentenced (L 2004, ch 738, §23 [unconsolidated]).

⁶The 2005 DLRA resentencing-eligibility provision provided:

... [a]ny person in the custody of the department of correctional services convicted of a class A-II felony offense defined in article 220 of the penal law which was committed prior to the effective date of this section, and who was sentenced thereon to an indeterminate term of imprisonment with a minimum period not less than three years pursuant to provisions of the law in effect prior to the effective date of this section, and who 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, and who meets the eligibility requirements of paragraph (d) of subdivision 1 of section 803 of the correction law may ... apply to be resentenced (L 2005, ch 643, §1 [unconsolidated]).

Correction Law §851(2), in pertinent part, defines an "eligible inmate" 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....

An in-custody class-A-II drug offender was only eligible to apply for resentencing if he was more than three years away from parole eligibility. See, People v. Mills, 11 N.Y.3d 527, 534 (2008).

This Court interpreted 2005 DLRA's three-year "carve out" as triage: "the Legislature chose to confine the opportunity for resentencing ... to those A-II felony drug offenders unable to seek early release from prison from the Parole Board in the near term," so as to ameliorate the sentences of "those A-II offenders facing the longest prison time." Mills, 11 N.Y.3d at 536.

When it drafted 2009 DLRA's resentencing-eligibility provisions, the Legislature continued the in-DOCS-custody requirement of the prior DLRA's, adding a requirement that eligible offenders must be "serving an indeterminate sentence with a maximum term of more than three years," but eliminating any reference to parole status. The 2009 provisions reflect a continued trend of broadening eligibility. Whereas both prior DLRA's had limited resentencing relief to those in-custody offenders serving sentences with "life on the back," and 2005 DLRA limited relief to those years away from parole eligibility. 2009 DLRA opened up relief to offenders serving shorter sentences, so long as they were in DOCS custody.

2009 DLRA, the last stop on this resentencing eligibility progression, reflects two important legislative policies: First, the Legislature has reached the stage in its triage that all in-DOCS-custody non-violent class-B drug offenders are entitled to have their Rockefeller Drug Law sentences reassessed by a judge in light of contemporary sentencing norms. Second, those offenders have a right to sentence review by a judge regardless of the Division of Parole's assessment that they should be denied parole. The continued inclusion of an in-DOCS-custody eligibility requirement in 2009 DLRA suggests that those offenders that have been denied parole or reincarcerated for parole violations were a particular target for sentence review, since they are the most likely to be in custody on pre-January-2005 class-B convictions. See, People v. Figueroa, 27 Misc.3d 751, 772 (Sup. Ct., NY Cty. 2010) (finding reincarcerated parole violator eligible; noting that because offenders can only become eligible for resentencing more than 4 years after commission of drug offense, and most offenders were serving "comparatively short" sentences, "many offenders may become technically eligible for resentencing only after a parole violation").

The eligibility exclusion read into CPL §440.46 by the First Department is contrary to this evolutionary progression. In People v. Pratts, the First Department cited this Court's

decision in Mills interpreting 2005 DLRA's parole-status eligibility exclusion as evidence that the Legislature intended to exclude those returned to custody following parole violations from eligibility to apply for resentencing under 2009 DLRA. 74 A.D.3d at 536-37 ("[t]here is no reason to believe that the Legislature intended parole violations to trigger resentencing opportunities"). But this Court's interpretation of 2005 DLRA establishes just the opposite: the fact that the Legislature intended to exclude some offenders from eligibility for resentencing under 2005 DLRA based on their parole status, and included a specific statutory provision to that effect, is proof that it intended no such exclusion in 2009 DLRA, because it eliminated any statutory parole-status eligibility exclusion from the 2009 Act.

In People v. Mills (Then), 11 N.Y.3d 527, the Court considered 2005 DLRA's parole-status eligibility exclusion in the context of two offenders. Mills had pleaded guilty to a class-A-II felony and been sentenced to 3 years to life imprisonment. After having been denied parole four times, he moved for 2005 DLRA resentencing. Id. at 530-31. Then sought resentencing on a class-A-II lifetime sentence after he was reincarcerated as a result of a new conviction, the sentence for which rendered him ineligible for parole within three years. Then argued that he met all the statute's criteria, in

that he was both incarcerated on an A-II felony and was more than three years away from parole. Id. at 532-33.

The Court resolved both cases on the express language of 2005 DLRA's parole-status eligibility exclusion. Emphasizing 2005 DLRA's three-year "carve-out," the Court found,

in order to qualify for resentencing under the 2005 DLRA, class A-II felony drug offenders must not be eligible for parole within three years of their resentencing applications.... The statutory text is simply not amenable to any other interpretation.

Id. at 534 [emphasis added].

Mills was ineligible for resentencing because, having passed his initial parole-eligibility date, he was required to receive a parole hearing every two years, and could therefore never be more than three years from parole eligibility. Id. at 536.

Then's situation was also resolved by the three-year carve-out's plain language. Reviewing 2005 DLRA's parole-status eligibility language, the Court held that once an inmate has been released to parole on an indeterminate A-II drug sentence, he cannot meet the temporal requirements of the parole-status exclusion, even if a new crime renders him ineligible for parole for more than three years. The statute requires that he be more than three years away from parole on the drug crime. Since Then had already been paroled, he would

never be more than three years away from parole eligibility on the old-law drug crime. In so finding, the Court emphasized the express three-year parole eligibility “carve out” again and again. See, e.g., 11 N.Y.3d at 537.

If the Appellate Division’s decision below were correct, i.e., that reincarcerated parole violators are never eligible for resentencing under any of the Drug Law Reform Acts,⁷ it would have been unnecessary for this Court to undertake the “complicated” review of Then’s eligibility under 2005 DLRA’s parole-status eligibility provision. Id. But the Court found that Then was ineligible to apply for resentencing only by virtue of 2005 DLRA’s express statutory parole-status eligibility exclusion. When this Court opined that the Legislature “did not intend fresh crimes to trigger resentencing opportunities,” it was referring to 2005 DLRA’s

⁷The First Department has effectively made such a finding. While this Court found that those released to parole and reincarcerated are ineligible for 2005 DLRA resentencing due to that statute’s three-year parole eligibility carve-out, see, Mills and Then, 11 N.Y.3d at 537, the First Department has found reincarcerated parole violators ineligible under both 2004 DLRA, see, People v. Rodriguez, 68 A.D.3d 676 (2009), and, by the decision herein, 2009 DLRA. We submit that the First Department’s interpretation of 2004 DLRA is wrong for many of the same reasons its interpretation of 2009 DLRA is flawed. But even if the First Department’s interpretation is correct as to 2004 DLRA, it is wrong as to 2009 DLRA, because 2009 DLRA reflects broadened, further-evolved drug reform. This court had no opportunity to review the First Department’s decision in Rodriguez, because, unlike 2009 DLRA, 2004 DLRA and 2005 DLRA had no provision authorizing an appeal to this Court. See, People v. Bautista, 7 N.Y.3d 838 (2006).

express three-year parole eligibility carve-out. Id. at 537 (“a valid and more sensible reading of the statutory text is that in order to be eligible for resentencing, an inmate must be more than three years from parole eligibility for the same class A-II drug felony for which resentencing is sought” [emphasis in original]). Rather than support the Appellate Division’s conclusion that all 3 DLRA’s exclude defendants from seeking resentencing once they have been released to parole, Mills and Then’s repeated reliance on 2005 DLRA’s express parole-eligibility language supports appellant’s position that, without such express language, there is no exclusion.

More, when the Legislature adopted 2009 DLRA without a parole-status eligibility exclusion, it is presumed to have been aware that this Court had interpreted 2005 DLRA in Mills and Then as excluding parole violators on only the three-year “carve out” grounds. See, People v. Robinson, 95 N.Y.2d 179, 184 (2000) (Legislature is presumed to be aware of decisional law in existence at time of statute’s enactment). Its choice not to include a parole-status eligibility exclusion in 2009 DLRA indicates that it did not intend such an exclusion.

Another adaptation to 2009 DLRA confirms that the Legislature did not intend to exclude those returned to DOCS custody following parole violations to be ineligible to apply

for resentencing. First, unlike 2004 & 2005 DLRAs, 2009 DLRA contains a detailed exception to eligibility, linked to prior violence. Under CPL §440.46(5), inmates who are currently serving a sentence on a conviction for an "exclusion offense" or have a "predicate felony conviction for an exclusion offense" are precluded from resentencing. The section then defines an exclusion offense – essentially, a violent or merit-ineligible predicate felony conviction within the preceding ten years. 2004 and 2005 DLRAs contain no similar exception. Under principles of statutory construction, "[w]hen one or more exceptions are expressly made in a statute, it is a fair inference that the Legislature intended that no other exceptions should be attached to the act by implication." See Statutes §213. This is the case with the 2009 DLRA, where the legislature set forth a detailed exception, see CPL §440.46(5), that does not embrace non-violent parole violators. Such a conclusion is particularly apt here, because the Legislature eliminated the parole-status eligibility exclusion that had been present in 2005, but added the exclusion relating to prior violent felony convictions.

* * *

As respondent has conceded, the plain language of CPL §440.46 contains no eligibility exclusion for offenders

returned to DOCS custody to continue serving their indeterminate sentence following a parole violation. As we have shown, this is not a case where the Court is called upon to interpret an ambiguous statute by weighing conflicting evidence of legislative intent. The statute's unambiguous language may only be overridden if it produces a result that conflicts with the purpose of the statute, a showing respondent cannot make. We have demonstrated that, rather than produce the at-odds-with-the-statutory-purpose result necessary to override the statute's plain language, the statute's plain language is perfectly consistent with its goals. Its language must be followed. Accordingly, since appellant was eligible to apply for resentencing, the order of supreme court should be reversed, and the matter remitted to supreme court for consideration of the motion's merits.

CONCLUSION

BECAUSE APPELLANT WAS ELIGIBLE TO APPLY FOR
RESENTENCING, THE ORDER OF SUPREME COURT SHOULD BE
REVERSED, AND THE MATTER REMITTED TO SUPREME COURT
FOR CONSIDERATION OF THE MOTION'S MERITS.

Respectfully submitted,

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By _____
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November 19, 2010