

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX: PART A

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

-AGAINST-

ELIAS DEJESUS,

DEFENDANT.
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DECISION AND ORDER
INDICTMENT NO. 03008-2001
01279-1999
01681-1999

JOHN N. BYRNE:

Upon the aforementioned papers the Court hereby **DENIES** the Petitioners motions for re-sentencing on **Indictments 1279/1999 and 1681/1999** pursuant to the Drug Law Reform Act of 2009, L. 2009, Ch.56, Part AAA, §9 (eff. Oct. 7, 2009) (codified at N.Y. Crim. Proc. Law § 440.46). (DRLA 2009).

As to the Petitioner's motion for Re-sentence on **Indictment 3008/2001**, the Defendant's motion is **GRANTED** upon consent of the People.

On April 8, 1999, the Petitioner entered pleas of guilty to two counts of Criminal Sale of a Controlled Substance In or Near School Grounds and one count of Criminal Sale of a Controlled Substance in the Third Degree Penal Law Sections §220.44(2) and §220.39(1).

On October 28, 1999, the Court sentenced the Petitioner to concurrent indeterminate terms of two years to six years incarceration under Indictment Numbers 1279/1999 and 1681/1999.

The Petitioner was released by the New York State Department of Corrections and placed under the Supervision of the Division of Parole on June 22, 2000.

On April 9, 2001, while still on parole, the Petitioner, was re-arrested and subsequently entered a plea of guilty to Penal Law Section §220.44(2), Criminal Sale of a Controlled Substance In or Near School Grounds, in full satisfaction Indictment Number 3008/2001.

As part of his plea agreement on Indictment 3008/2001, and with the approval of the Division of Parole, the Petitioner was ordered to enter and complete an eighteen to twenty-four month residential drug treatment program. Under the supervision of Treatment Accountability for Safer Communities (TASC), if Petitioner successfully completed the TASC Program, he

would have been allowed to withdraw his felony plea and re-enter a plea to a misdemeanor. His final sentence would have been a conditional discharge. Petitioner was aware that if he failed to complete any of the terms of his plea, he faced an indeterminate jail alternative sentence of fifty four months to nine years incarceration, in addition to any undetermined term of incarceration stemming from a violation of his then-current parole supervision.

On March 4, 2002, TASC informed the Court that the Petitioner had violated the terms of the TASC Program. On December 29, 2002, the Court sentenced the Petitioner to the jail alternative of fifty-four months to nine years incarceration on Indictment 3008/2001 and for parole violations arising from Indictments 1280/1999 and 1681/1999. Petitioner is currently in the custody of the New York State Department of Corrections.

Petitioners 1999 Indictments

The Court has carefully reviewed the parties' papers, the Petitioner's criminal history, as well as his institutional records.

The Court agrees with the decision rendered by the Honorable John Collins in People v. Orta, Bronx County Indictment Number 6046/2002, that the legislature did not intend the Drug Law Reform Act of 2009 to apply to parole violations as is the case here. As the Court in People v. McCloud, 38 A.D. 3d 1056 (2007), stated while interpreting the DLRA of 2005, "we do not believe that the drug reform laws were intended to apply to offenders who have served their terms of imprisonment, been released to parole supervision, violated their parole and, as a result were subject to a subsequent period of incarceration. (See also, People v Hardy, 49 A.D. 3d 779 (2008).

Neither the 2009 Act nor any legislative comments indicate that eligibility to apply for re-sentencing was intended to apply to anyone other than those serving their original sentence.

It is clear that as to Indictments 1279/1999 and 1681/1999, the Petitioner had already served his term of incarceration and was under the Supervision of the Division of parole at the time of his arrest on Indictment 3008/2001. Therefore, the Court cannot re-sentence the Petitioner on his 1999 indictments.

Finally, as noted in the People's papers, the Petitioner's request for re-sentencing of matters stemming from parole violations should be directed to Division of Parole under Executive Law Section 295. See, Executive Law §295-j, as newly amended by the Drug Law Reform Act of 2009 for a reduction or a termination of any sentence arising from violations of parole.

Therefore, the Court denies the Petitioners Motion for Re-Sentencing as to Indictments 1270-1999 and 1681/1999.

Petitioners 2001 Indictment

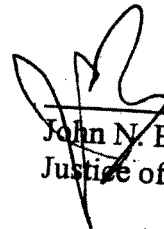
The People consent to the Petitioner's re-sentence pursuant to the Drug Law Reform Act of 2009 on Indictment 3008/2001.

As to Indictment 3008/2001, the Petitioner's motion is **Granted**. The prior sentence is vacated.

The Petitioner is sentenced *nunc pro tunc* as of January 5, 2010 to a determinate term of 3 years incarceration and 2 years post release supervision.

This opinion constitutes the decision and order of this Court.

DATED: January 5, 2010
Bronx, New York



John N. Byrne
Justice of the Supreme Court