

STATE OF NEW YORK
COUNTY COURT :: BROOME COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

HAROUN EL-HADI,

Defendant.

MARTIN E. SMITH, J.

By notice of motion and affidavit under date of March 1, 2010, counsel for the defendant seeks an order re-sentencing defendant in accordance with Criminal Procedure Law §440.46. The People have responded under date of March 31, 2010. An appearance was had on May 18, 2010. At that appearance, the Court advised the defendant that it intended to deny the defendant's application.

The defendant was on parole for his June 1997 conviction for Criminal Sale of a Controlled Substance in the Third Degree when he engaged in conduct leading to his indictment on December 11, 2000 for two counts of Criminal Possession of a Controlled Substance in the Third Degree and one count of Criminally Using Drug Paraphernalia in the Second Degree under the above indictment number 00-713. Following a jury trial, the defendant was found guilty of all counts on April 25, 2001. He was sentenced on June 28, 2001 as a second felony offender to concurrent prison terms of six to twelve years.

The People concede that the defendant is eligible to be re-sentenced under CPL §440.46, but argue that "substantial justice dictates that the application should be denied." In this case, as set forth above, the defendant was on parole for his 1997 Supreme Court Kings County conviction for Criminal Sale of a Controlled Substance in the Third Degree when he committed the crimes in the

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By:
PUBLIC DEFENDER

DECISION AND ORDER

Ind#00-713

instant indictment. The crimes he committed as well as information provided in the pre-sentence investigation report (hereinafter PSR) supports the conclusion that the defendant was actively selling controlled substances, and was not himself a drug addict. The PSR describes an individual engaged in lawless behavior, who at the age of 24 years, had never held any employment, had dropped out of high school and had fathered three children by three different women. Two of these children were born one month apart. His legal history, the report said, "indicates an ongoing course of violence and drugs."

The People urge that although eligible for re-sentencing, the sentence imposed at the time was warranted and remains appropriate. Although the people's position is that re-sentencing is not warranted, they urge that should the Court grant the application, they would recommend a determinate term of at least nine years with three years post-release supervision.

The defendant provides information regarding his efforts at rehabilitation, work history, and disciplinary record while incarcerated. He has had fourteen Tier 2 violations, and nine Tier 3 violations. His most recent violations were on December 31, 2009, and February 13, 2010. Both were Tier 2 violations.

"Rockefeller Drug Law Reform" (L. 2004 c. 738) had amended the correction law, the criminal procedure law, the penal law and the executive law in relation to controlled substance offenses and indeterminate sentences, and it had also repealed certain provisions of the correction law, the criminal procedure law and the penal law in relation to controlled substance offenses and indeterminate sentences. The purpose of the legislation was to reform the sentencing structure of New York's drug laws to reduce prison terms for non-violent drug offenders, and to provide retroactive sentencing relief and make related drug law sentencing improvements. The legislation made provisions for people then currently serving state prison sentences for class AI drug offenses

to apply to be re-sentenced.

In 2005, the Legislature addressed drug crime sentencing reform again. That Drug Sentencing Reform Act provided for sentencing relief for A-II felons (L. 2005 c. 643).

In 2009, the Legislature again took up the subject of drug law reform, and under L. 2009 ch. 56 more changes were made to the Penal Law, Criminal Procedure Law and Correction Law, particularly as relates to sentencing for drug crimes defined in Penal Law articles 220 and 221. Additionally, certain defendants who had been convicted of class B felonies could now seek redress under the new laws, which they could not do under the 2004 or 2005 reform acts.

Once an applicant is found to be eligible for re-sentencing, the latest legislation still leaves to the hearing court's discretion whether such is warranted. The Court finds that the interests of justice will not be served by granting the defendant's application, but finds that the interests of justice require that his application for re-sentencing be denied.

It is so ordered.

DATED: July 12, 2010
Binghamton, NY


MARTIN E. SMITH
Broome County Court Judge