

STATE OF NEW YORK
COUNTY COURT :: BROOME COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

DECISION AND ORDER

-vs-

LESLIE R. HUGHES,

Ind#94-589

SCI#95-356

Defendant.

MARTIN E. SMITH, J.

The above defendant had applied, *pro se* under date of May 1, 2009 for re-sentencing under the newest drug law reform legislation (DLRA) (L. 2009 ch. 56). It appeared to the Court that he might have been in the class of offenders who are now eligible to apply to be re-sentenced under (new) Criminal Procedure Law §440.46. The Court therefore assigned the Broome County Public Defender to represent him in connection with the preparation of and proceedings on a motion pursuant to that section. (CPL §440.46[4].

By notice of motion and affidavit under date of October 13, 2009, counsel for the defendant seeks an order re-sentencing defendant in accordance with Criminal Procedure Law §440.46. The People responded under date of November 10, 2009. At an appearance on February 24, 2010, the Court advised the defendant that it intended to grant the defendant's application for re-sentencing and impose consecutive determinate terms of six year followed by two years post-release supervision. The matter was adjourned until March 4, 2010.

The defendant was originally sentenced on October 29, 1997 to consecutive indeterminate terms of imprisonment of six to eighteen years on each indictment. The People's response accurately sets forth the chronology of events leading up to his sentencing. The People agree that the defendant appears to be within that class of inmates eligible for re-sentencing, but argues that the original

sentences imposed, given the defendant's conduct at the time, were and remain 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 consecutive determinate terms of at least six years with two years post-release supervision.

The defendant alleges that he has been incarcerated since October 1997 on these convictions and sentences. The defendant provides information regarding his efforts at rehabilitation, education, work training and his efforts at achieving sobriety during his incarceration.

The Court finds that the defendant has made efforts at rehabilitation, education, and work training and has made efforts at achieving sobriety during his incarceration. It finds these efforts to have been commendable. The Court also finds that although the defendant had received several Tier II "tickets" while in prison, he has received only one Tier III "ticket" in twelve years. None of these "tickets" were for egregious conduct.

Given the facts as set forth above, the Court concludes that the proposed sentence is reasonable and appropriate under the circumstances. It recognizes the harshness of the earlier imposed sentences under the former sentencing structure, yet recognizes in part that those sentences had been imposed because of the defendant's conduct pending sentence. Likewise, the intended re-sentences recognize in part the punitive measure of the sentence, but also the need to provide some measure of supervision and stability for the defendant's benefit (and that of the community) given his history of substance abuse, and the burden this has been to him and the community.

Accordingly, the Court hereby vacates the sentences originally imposed, and imposes a sentence of a determinate term of six years in a New York State Correctional Facility followed by two years of post-release supervision in connection with Ind. #94-589, and a determinate term of six

years in a New York State Correctional Facility followed by two years of post-release supervision in connection with SCI#95-356. These sentences are directed to be served consecutive to one another.

The Court Clerk is hereby ordered to prepare new Sentences and Commitments.

The Court Clerk is further ordered to provide a certified copy of the new Sentences and Commitments to:

Richard de Simone, Esq.
Office of Sentencing Review
NYS Department of Corrections
The Harriman State Campus--Building 2
1220 Washington Avenue
Albany, NY 12226-2050

It is so ordered.

DATED: March 4, 2010
Binghamton, NY


MARTIN E. SMITH
Broome County Court Judge