

People v Milton
2011 NY Slip Op 05981
Decided on July 21, 2011
Appellate Division, First Department
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Decided on July 21, 2011

Tom, J.P., Mazzairelli, Acosta, DeGrasse, Román, JJ.

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[*1] The People of the State of New York, 43611C/04 Respondent, 61822C/04

v

Christopher Milton, Defendant-Appellant.

Steven Banks, The Legal Aid Society, New York (David Crow of counsel), and Davis Polk & Wardwell LLP, New York (William Pollak of counsel), for appellant.

Robert T. Johnson, District Attorney, Bronx (Brian J. Reimels of counsel), for respondent.

Order, Supreme Court, Bronx County (John P. Collins, J.), entered on or about June 28, 2010, denying defendant's CPL 440.46 motion for resentencing, unanimously reversed, as a matter of discretion in the interest of justice, the motion granted, the order replaced by an order specifying and informing defendant of a proposed sentence of five years plus three years' postrelease supervision, and the matter remanded for further proceedings.

By judgment, same court and Justice, rendered December 13, 2004, defendant was convicted, on his guilty plea, of two counts of criminal sale of a controlled substance in the third degree, a class B felony (Penal Law § 220.16). In accordance with the plea agreement, defendant was placed under the supervision of Treatment Accountability for Safe Communities and directed to complete a drug treatment program. Despite being afforded several opportunities, defendant failed to comply with the terms of the program and on September 21, 2006 was sentenced as a second felony offender, same court and Justice, to concurrent terms of 4½ to 9 years.

Defendant brought this motion seeking to be resentenced under the Drug Law Reform Act of 2009 (L 2009, ch 56) (DLRA). While finding defendant eligible for resentencing, Supreme Court, in its discretion, denied the motion on the ground that defendant had failed to avail himself of the alternative of drug treatment.

Although defendant failed to complete the drug treatment program and has not been a model prisoner, we note that his family has promised to provide him with substantial assistance upon release, including employment, help in finding housing and emotional support. Resentencing promotes the purpose of the 2009 DLRA to ameliorate harsh sentences, and the requisite period of postrelease supervision affords protection to the community (*see People v Goss*, 286 AD2d 180, 183 [2001]). We therefore exercise our discretion to grant the motion and to specify and inform defendant of an appropriate proposed sentence, and we remit for further proceedings (CPL 440.46[3]; L 2004, ch 738, § 23).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. [*2]

ENTERED: JULY 21, 2011

CLERK

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