

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX: PART 32

REC'D
AUG 17 2010
CLERK OF COURT

x

THE PEOPLE OF THE STATE OF NEW YORK

DECISION

Indictment No. 1213-04
Motion to Reargue

-against -

Lawrence Mudd,

Petitioner.

x

For the People: Nikki Harding
For the Petitioner: Rosemary Herbert

VILLEGAS, J.

The Defendant, Lawrence Mudd, filed a motion requesting re-sentencing pursuant to the Drug Law Reform Act of 2009 reflected in the Criminal Procedure Law (hereinafter C.P.L.) § 440.46. The People opposed that motion. This court after having reviewed the court file, the motions submitted and conducting a hearing granted the Petitioner's motion. On May 26, 2010 the Defendant was re-sentenced and is now released. The People now file a motion to reargue that re-sentencing.

The People's argument is based on a New York State 1st Department case which was issued subsequent to the Defendant's re-sentencing on June 10, 2010. That case states that "the 2009 DLRA like its predecessors, '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'" *People v Pratts*, 2010 NY Slip Op 04928 quoting *People v Bagby*, 11 Misc 3d 882, (2006)

The issue at bar is that the Defendant, Lawrence Mudd, was a parole violator and was re-sentenced to 2 years followed by 1 1/2 years of post release supervision on indictment # 1213-04. The People request re-argument. The Defendant opposes it. At the time of his re-sentencing the Defendant was two months from his conditional release date, had served over four years of his sentence, which was for the sale of one \$5 bag of crack-cocaine and was a parole violator. This

Court can appreciate that at the time of the re-sentencing this Court's interpretation of the 2009 DLRA was misplaced.

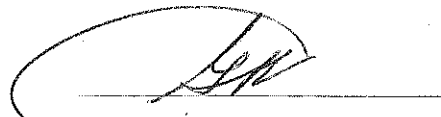
When this Court re-sentenced the Defendant there was disagreement amongst the lower courts as to how the 2009 DLRA should be interpreted. Both the Defendant and the People submitted cases in support of their position. The Courts were divided between judges that had interpreted the statute to mean that parole violators were eligible and those who decided that they were not. This court at the time of its ruling did not have the benefit of the *Pratts* decision to serve as a guide. *Pratts* was rendered after this Court's ruling, and the Defendant's re-sentencing and release.

This Court is clear that the New York Supreme Court Appellate Division 1st Department case law is binding on it. However having reviewed the *Pratts* case this Court does not find that the New York Supreme Court Appellate Division 1st Department intended for the decision to be retroactive. This Court is clear that all its future decisions will be consistent with *Pratts*. This Court's re-sentencing of the Defendant was prior to *Pratts*.

For the above stated reasons the People's motion to reargue is denied.

The foregoing constitutes the Decision of the Court.

Date: July 26, 2010
Bronx, New York



George R. Villegas,

Justice Supreme Court