

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: CRIMINAL DIVISION, PART 21

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

-against-

ORDER  
Docket #BX05331-03

RAHJEEM WILLIAMS

Defendant

-----X  
APPEARANCES:

FOR THE PEOPLE:

Robert T. Johnson  
District Attorney  
Bronx County  
265 E. 161<sup>ST</sup> Street  
Bronx, NY 10451  
By: Nikki Harding, Esq.  
Assistant District Attorney  
Of Counsel

FOR THE DEFENDANT:

Office of the Appellate Defender  
11 Park Place Suite 1601  
New York, NY 10007  
By: Rosemary Herbert, Esq.

RAYMOND BRUCE, J.:

The defendant, RAHJEEM WILLIAMS, [hereinafter Williams] requests re-sentencing pursuant to the Criminal Procedure Law [herein after C.P.L.] §440.46 - Drug Law Reform Act, L. 2009, Ch 56, sect 9 (eff. October 7, 2009). The People oppose the motion. For the reasons that follow this court finds Defendant Williams is eligible for re-sentencing.

**PROCEDURAL HISTORY**

On July 7, 2005, Willams was found guilty, after a jury trial, of PL § 220.16(1) criminal possession of a controlled substance. The jury did not reach a verdict on PL § 220.39(1) criminal sale of a controlled substance in the third degree as the People dismissed the PL § 220.39(1) charge.

On September 26, 2005, this Court sentenced Williams as a second felony offender to an indeterminate term of four and one-half to nine years incarceration.

On November 15, 2005, the Appellate Division First Department, granted Williams' application for leave and on January 19, 2006, this Court denied Williams' October 8, 2005 - CPL §440.10 motion to vacate his judgment of conviction.

On November 16, 2006, the Appellate Division First Department denied Williams' leave to appeal on the grounds that there were no questions of law or fact presented. On December 14, 2006, the Court of Appeals dismissed Williams' leave application.

On April 14, 2009, the Appellate Division First Department affirmed Mr. Williams conviction (People v Williams, 61 Ad3d 470 (1<sup>st</sup> Dept 2009). The Court of Appeals has granted leave to appeal, see 13 NY3d 751 (2009) the matter is pending before that Court.

Mr. Williams has two previous felony convictions:

1) 1999 conviction for P.L. § Criminal Sale of a Controlled Substance in the 5<sup>th</sup> Degree (D-non violent felony).

2) 1994 conviction for P.L. § Attempted Robbery in the Second Degree C - Violent felony).

### **DISCUSSION**

Defendant Williams has requested the following relief:

- 1) Vacating the indeterminate sentence of 4 ½ to 9 years under Criminal Possession of a Controlled Substance in the Third Degree;
- 2) Conducting a hearing to consider compelling mitigating evidence in support the request for re-sentencing and to resolve any disputed issue of fact;
- 3) Re-sentencing Defendant Williams to the minimum sentence of 6 years imprisonment and 1½ years of post release supervision pursuant to Drug Law Reform Act of 2009 (L. 2009, Ch. 56 §9 and amended N.Y. Crim. Pro. Law §440.46) and as authorized by N.Y. Penal Law §60.04 and §70.70; and
- 4) Granting any other relief that this Court deems just and proper.

Pursuant to Criminal Procedure Law [hereinafter C.P.L]. § 440.46 (1), any person in the custody of correctional services convicted of a class B felony offense defined in P.L. §220 which was committed prior to January 13, 2005, who is serving an indeterminate sentence with a maximum term of more than three years, may, except as provided in subdivision five of this section upon notice to the appropriate district attorney, apply to be re-sentenced to a determinate sentence.

Pursuant to C.P.L. § 440.46(1) this Court finds that Defendant Williams is eligible for re-sentencing as he fulfills the criteria set forth by the statute. C.P.L. § 440.46 is applicable to Defendant Williams as there is no exclusion in the statute for individuals who are re-incarcerated due to a parole violation. Upon a plain reading of the statute, this Court finds that Defendant Williams is in custody of the Department of Correctional Services and is "serving" time on his previous sentence. Defendant Williams was convicted of a class B felony offense. Defendant Williams' incarceration is an indeterminate term of 4 ½ to 9 years, fulfilling the requirement that he was sentenced to a maximum term of 3 years.

This court now must determine Defendant Williams' eligibility under C.P.L. § 440.46(5). C.P.L. § 440.46(5) clearly states that C.P.L. § 440.46 shall not apply to any person who is serving a sentence on a conviction for or has a predicate felony conviction for an exclusion offense. An "exclusion offense" is: (a) a conviction, within the preceding ten years, excluding any time during which the offender was incarcerated for any reason between the time of commission of the previous felony and the time of commission of the present felony, which was: (I) a violent felony offense as defined in P.L. § 70.02 ; or (ii) any other offense for which a merit time allowance is not available pursuant to subparagraph (ii) of paragraph (d) of Correction Law § 803 (1); or (b) a second violent felony offense pursuant to P.L. § 70.04 or a persistent violent felony offense pursuant to P.L. § 70.08 for which the person has previously been adjudicated. See *People v Brock* 2010 N.Y. Slip Op 20035.

After a review of Defendant's past offenses, this court finds no C.P.L. § 440.46(5) exclusions.

#### PROPOSED RE-SENTENCE

The People and Counsel for defense have described in their motion Defendant Williams' multiple

contacts with the Criminal Justice system.

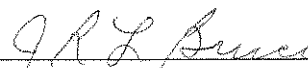
C.P.L. 440.46 (3) requires this court to review and consider the institutional record of confinement of such person. The institutional record shall include but not be limited to such person's participation in or willingness to participate in treatment or other programming while incarcerated and such person's disciplinary history. In addition, the fact that a person may have been unable to participate in treatment or other programming while incarcerated despite such person's willingness to do so shall not be considered a negative factor in determining a motion pursuant to this section. See *Brock* supra.

This Court has reviewed Defendant's institutional record in detail. Defendant's behavior while incarcerated includes both positive participation in a variety of programs and negative institutional contacts. After a review of the Defendant's institutional violations, this Court holds that they do not negatively impact his present motion. Defendant's record includes certificates and records of participation in a variety of positive institutional programs such as obtaining his GED in May 2009, Custodial Maintenance Training in 2009, HIV-Aids Peer Training, and Alcohol and Substance Abuse Treatment program (ASAT).

After conducting a hearing and after a review of all the motion papers submitted herein, the statutes and sentencing guidelines this Court finds defendant eligible to be re-sentenced under C.P.L. § 440.46 to a determinate term of 6 years and 1 ½ years Post Release Supervision, nunc pro tunc, to be calculated from the date of the original sentence, September 26, 2005.

The foregoing shall constitute the Decision and Order of this Court.

Dated: March 8, 2010

  
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Hon. Raymond L. Bruce  
Acting Supreme Court Justice