

SUPREME COURT of the STATE of NEW YORK
COUNTY of NEW YORK: PART 73

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THE PEOPLE of the STATE of NEW YORK,

v


Decision and Order
Indictment No. 0234-2009

 SMITH,

Defendant.

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EDUARDO PADRÓ, J.

On May 27, 2009,  Smith, the defendant, was arraigned in Supreme Court. The case was then transferred to a calendar part. The presiding justice determined that the defendant met the threshold requirements, i.e. was "paper eligible", for Judicial Diversion consideration and ordered the defendant to be evaluated by the Manhattan Drug Court (henceforth MDC). The case was transferred to MDC Part-73. In the interim, MDC assessed the defendant and found her to be a substance abuser. The court conferenced the case with all the interested parties. Pursuant to CPL § 216.05 this Court granted the defendant's application for Judicial Diversion. On December 2, 2009, the defendant pled guilty to Criminal Possession of a Controlled Substance in the Fifth Degree, Penal Law § 220.06(5) and executed the MDC Plea Agreement in open court. The court's promise included an understanding that sentencing would be deferred for a minimum of 12 months while she completed all of her obligations under the Agreement. The court promised that should the defendant successfully complete her out-patient substance abuse program, the plea would be vacated, the case would be dismissed in its entirety and the court

would consider sealing the record pursuant to C.P.L. § 160.58.¹

On January 19, 2011, this Court ruled that the defendant, [REDACTED] Smith, successfully completed the Judicial Diversion drug treatment program. In accordance with the express terms of the plea agreement the defendant moved to vacate her guilty plea and for dismissal of the case. The defendant also moved to have the indictment sealed.

It is undisputed that C.P.L. § 216.05, authorizes the court to vacate previously entered pleas and to dismiss the entire indictment in cases when defendants have successfully completed Judicial Diversion.

C.P.L. § 216.05(10) reads:

Upon the courts determination that the defendant has successfully completed the required period of alcohol or substance abuse treatment and has otherwise satisfied the conditions required for successful completion of the judicial diversion program, the court shall comply with the terms and conditions it set for final disposition when it accepted the defendants agreement to participate in the judicial diversion program. Such disposition may include, but is not limited to: (a) requiring the defendant to undergo a period of interim probation supervision and, upon the defendants successful completion of the interim probation supervision term, notwithstanding the provision of any other law, permitting the defendant to withdraw his or her guilty plea and dismissing the indictment; or (b) requiring the defendant to undergo a period of interim probation supervision and, upon successful completion of the interim probation supervision term, notwithstanding the provision of any other law, permitting the defendant to withdraw his or her guilty plea, enter a guilty plea to a misdemeanor offence and sentencing the defendant as promised in the plea agreement, which may include a period of probation supervision pursuant to § 65.00 of the penal law; or (c) allowing the defendant to withdraw his or her guilty plea and dismissing the indictment.

The People agree that the dismissal of the indictment is lawful and appropriate, however, oppose the motion to seal the record. The People argue that this Court does not have the

¹ The court also indicated the possible alternative sentences to be imposed should the defendant fail to complete the program. If Defendant failed to successfully complete the program and was not arrested on a new offense, Defendant would receive 1 year incarceration as a definite sentence. Had the Defendant been arrested on a new charge, she would have faced a maximum jail sentence of 2 ½ years as a determinant sentence followed by 1 year Post Release Supervision.

authority to seal the records pursuant to C.P.L. § 160.58. They maintain that the provision applies only when a defendant has been convicted and *sentenced* which the people argue will not have occurred once this Court dismisses the case. The People's argument rests on the premise that the defendant in this case is not "sentenced" within the meaning of C.P.L. § 160.58 because her case will be dismissed. Therefore, they maintain that the defendant is not entitled to have her case sealed under that section.

C.P.L. § 160.58 was enacted for the express purpose of granting the court the authority to conditionally seal the cases of those defendants who have successfully completed the court mandate to enter and complete drug treatment pursuant to CPL § 216.00 and sets out the procedure to be followed. This statute allows for the possible sealing of up to an additional three prior convictions.

C.P.L. § 160.58 reads (in relevant parts):

1. A defendant convicted of any offense defined in article two hundred twenty or two hundred twenty-one of the penal law or a specific offense defined in subdivision five of section 410.91 of this chapter who has successfully completed a judicial diversion program under article two hundred sixteen of this chapter, or one of the programs heretofore known as drug treatment alternative to prison or another judicially sanctioned drug treatment program of similar duration, requirements and level of supervision, and has ***completed the sentence*** [Emphasis added] imposed for the offense or offenses, is eligible to have such offense or offenses sealed pursuant to this section.

2. The court that ***sentenced*** [Emphasis added] the defendant to a judicially sanctioned drug treatment program may on its own motion, or on the defendant's motion, order that all official records and papers relating to the arrest, prosecution and conviction which resulted in the defendant's participation in the judicially sanctioned drug treatment program be conditionally sealed. In such case, the court may also conditionally seal the arrest, prosecution and conviction records for no more than three of the defendant's prior eligible misdemeanors, which for purposes of this subdivision shall be limited to misdemeanor offenses defined in article two hundred twenty or two hundred twenty-one of the penal law.

If C.P.L. § 160.58 is analyzed as if it were an independent statute, the People's argument raises a valid concern. C.P.L. § 160.58, however, must be examined within the context of the

entire statutory scheme implemented by the legislature and as a corollary statute to Article 216.

As previously indicated, the legislature created Article 216 specifically granting courts for the first time the authority to vacate pleas and to dismiss entire indictments when defendants successfully complete drug treatment programs.² Legal analysts have noted that this legislation reflects a major shift in society's understanding of issues of drug abuse and dependence since days of the passage of the Rockefeller Laws. This innovative statutory scheme incorporates the therapeutic treatment model within the criminal justice system. Other corollary statutes, such as C.P.L. §160.58 and C.P.L. § 410.91(5), were passed granting the court additional authority to fully carry out the purpose of Article 216.

C.P.L. §160.58 has no meaning nor purpose, if read outside the context of Article 216. In the very first sentence of the statute, its "raison d'être" is immediately linked to defendants "who ha(ve) successfully completed a judicial diversion program under article two hundred and sixteen of this chapter..."³ In C.P.L. §160.58(2) the authority to seal a defendant's case rests with "the court that *sentenced* [Emphasis added] the defendant to a judicially sanctioned drug treatment program". Were the court to adopt the People's narrow interpretation of the term "sentence," then C.P.L. §160.58 is, in fact, a complete nullity. Nowhere in Article 216 is a defendant technically "*sentenced*" to a judicially sanctioned drug treatment program. C.P.L. § 216.05(4), however, requires that a defendant first enter a plea of guilty⁴, i.e, be convicted before

² Article 216 also permits the court, in the alternative, to vacate pleas and allow defendants to re-plea to lesser crimes.

³ Or similarly situated "judicially sanctioned drug treatment program(s)."

⁴ CPL Sect. 216.05(4) reads, in relevant part: "Prior to the court's issuing an order granting judicial diversion, the eligible defendant shall be required to enter a plea of guilty to the charge or charges."

the granting of the order of judicial diversion. C.P.L. § 216.05(5) imposes a requirement that the defendant agree, orally or in writing, to the release conditions set by the court. C.P.L. § 216.05(9) further grants the court the authority to impose “a system of graduated and appropriate responses or sanctions.” These sanctions include the use of traditional punitive sanctions such as incarceration, albeit, with a therapeutic purpose. Under C.P.L. § 216.05, the court’s order or mandate into drug treatment effectively sets up the functional equivalent of a conditional sentence into a drug treatment program. Furthermore, the parameters of the possible “final sentence” are prescribed at the moment a defendant enters the guilty plea. C.P.L. § 216.05(10) imposes upon the court the requirement that it “comply with the terms and conditions it set for final disposition when it accepted the defendant’s agreement to participate in the judicial diversion program.” At the end of the judicial diversion process, the court does not participate in a completely *de novo* analysis with regards to sentencing. The court, in essence, is limited to reviewing the defendant’s satisfactory or unsatisfactory compliance with drug treatment. The court’s final sentencing options are circumscribed by the terms of the original plea and the promised possible sentences.

When a defendant successfully completes treatment, C.P.L. § 216.05 goes a step further. The statute allows for the vacatur of the plea, vacatur of the *de facto* “conditional sentence” and allows the court to dismiss the indictment. C.P.L. § 160.58, then authorizes the court to seal the record. This court concludes that when C.P.L. § 160.58 is analyzed within the context of Article 216 and its corollary statutes, the term “***sentenced***” in C.P.L. § 160.58(1) requires a more expansive definition.

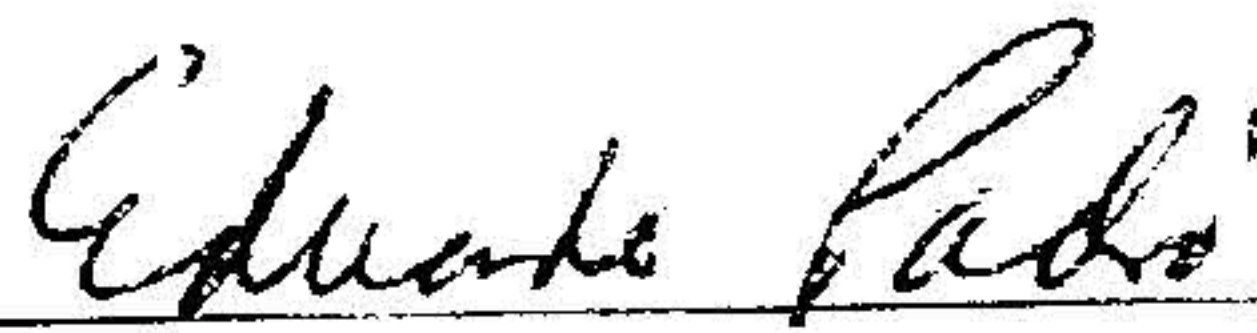
In the instant matter, [REDACTED] Smith was “convicted” at the moment her plea was entered

on December 2, 2009. The defendant was subjected to a “conditional sentence” in a therapeutic setting with real sanctions, including the potential of being subjected to periods of incarceration. What has not occurred is a “final sentence.” Moreover, pursuant to her plea agreement, there will be no “final sentence.” Ms. Smith successfully completed Judicial Diversion and is, therefore, entitled to the vacatur of the plea and dismissal of the indictment. Pursuant to the preceding analysis, C.P.L. § 160.58 specifically allows for the sealing of all official court records and papers of defendants who have successfully completed a judicial diversion program. The court finds that the defendant has also satisfied the requirements for sealing in accordance with C.P.L. §160.58.

The defendants motion to seal her conviction is granted.

The foregoing constitutes the decision and order of the Court.

Dated: August 8, 2011

A handwritten signature in cursive script, reading "Eduardo Padró", is written over a horizontal line.

Eduardo Padró, J.S.C.

Hon. E. Padre