

SUPREME COURT OF THE STATE OF NEW YORK  
QUEENS COUNTY—CRIMINAL TERM—PART K-23

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THE PEOPLE OF THE STATE OF NEW YORK

- against -

ORDER OF THE COURT

LARRY YOUNG,

INDICTMENT NUMBER: QN12215/95

Defendant.

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JOEL L. BLUMENFELD, JSC

The defendant moves for resentencing pursuant to CPL 440.46.

On November 18, 1996, the defendant, having been convicted of criminal sale of a controlled substance in the third degree (Penal Law § 220.39 [1]) and criminal sale of a controlled substance in or near school grounds (Penal Law § 220.44 [2]), was sentenced as a second felony offender to concurrent terms of prison from 10 to 20 years on each count.

On February 2, 2010, the defendant moved to for resentencing pursuant to the procedure in CPL 440.46.

On March 2, 2010, the defendant was released from the custody of the Department of Corrections.

The 2009 Drug Law Reform Act (L 2009, c 56) codified in CPL 440.46, allows a person convicted of a class B felony offense defined in Penal Law article 220 — Controlled Substances Offenses — who is in the “custody of the department of correctional services” to apply for resentencing. In the instant case, the defendant is not now in custody. This language is identical to the language the legislature used in the 2005 Drug Law Reform Act (L 2004, c 738, § 23)

wherein it is stated that a person convicted of a class A-II felony offense defined in Penal Law article 220 — Controlled Substances Offenses — who is in the “custody of the department of correctional services” may apply for resentencing. The Court of Appeals in *People v Mills*, 11 NY3d 527 (2008), interpreting the 2005 version of the DLRA and held that “once a defendant has been released to parole supervision for a class A-II drug felony conviction, he or she no longer qualifies for 2005 DLRA relief for that particular conviction” (*id.*, 537).

As *Mills* was decided prior to the enactment of the 2009 Drug Law Reform Act, the legislature was cognizant of this interpretation by the Court of Appeals. Had the court in *Mills*, misinterpreted the intent of the legislature, the legislature could have made the 2009 DLRA more accurately reflect its intent.


The court in *Mills* drew the line between being an eligible inmate and not being eligible as the release from prison on parole: “We therefore hold that once a defendant has been released to parole supervision for a class A-II drug felony conviction, he or she no longer qualifies for 2005 DLRA relief for that particular conviction” (*id.*).

Since the 2005 and 2009 version of DLRA both state that the defendant must be in custody, the court must apply *Mills* to the instant case.

Accordingly, the instant defendant, who is no longer in custody, does not qualify for resentencing.

The Clerk of the Court is directed to enter this Order. IT IS SO ORDERED.

DATE: April 7, 2010  
Kew Gardens, NY

  
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JOEL L. BLUMENFELD,  
Acting Justice of the Supreme Court