

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: CRIMINAL TERM: PART 93

-----X

THE PEOPLE OF THE STATE OF NEW YORK,	:	NOTICE OF MOTION
Respondent,	:	
-against-	:	
██████████,	:	Ind. No. ██████████
Defendant.	:	

-----X

PLEASE TAKE NOTICE that, upon the annexed affirmation of RICHARD JOSELSON and all the prior proceedings herein, the undersigned will move this Court, at the Courthouse, 100 Centre Street, New York, N.Y., 10013 on August 8, 2011, at 9:30 a.m. or as soon thereafter as counsel may be heard, for an order, pursuant to C.P.L.R. §2221(e), granting renewal of his Drug Law Reform Act motion for resentencing, originally filed on September 29, 2009, and previously denied by the Court in an order dated June 22, 2010 (Exhibit A, attached); upon renewal, vacating the 4½-to-9 year sentence imposed on June 30, 1997 (Berman, J.); resentencing defendant to a determinate prison term to be followed by a period of post-release supervision; and granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
July 22, 2011

Yours, etc.

STEVEN BANKS
The Legal Aid Society – Criminal
Appeals Bureau
199 Water Street –5th Floor
New York, New York 10038
(212) 577-3451

RICHARD JOELSON
Of Counsel
rjoselson@legal-aid.org

TO:

CLERK OF THE COURT
100 Centre Street
Room 1000
New York, New York 10013

HON. CYRUS R. VANCE
District Attorney
New York County
One Hogan Place
New York, New York 10013

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: CRIMINAL TERM: PART 93

-----X

THE PEOPLE OF THE STATE OF NEW YORK, :

Respondent, :

-against- :

AFFIRMATION

██████████, :

Defendant-Appellant. :

-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

RICHARD JOELSON, an attorney admitted to practice in the Courts of this State, hereby affirms under the penalties of perjury that the following statements are true, except for those made upon information and belief, which he believes to be true:

1. I am associated with Steven Banks, Attorney-in-Chief of The Legal Aid Society, which represents Mr. ██████████ in proceedings relating to his motion for resentencing pursuant to the Drug Law Reform Act of 2009 [Sess. Laws of N.Y., Ch. 56, §9].
2. I offer this affirmation in support of Mr. ██████████ motion, pursuant to C.P.L.R. §2221(e), to renew his petition for resentencing under New York County Indictment Number 599/97.

3. C.P.L.R. §2221(e)(2) provides, in relevant part, that a party may file a motion for leave to renew when “there has been a change in law that would change the prior determination.” See *Dinallo v. DAL*, 60 A.D.3d 620 (2d Dept. 2009). The statute includes no time limit for bringing a motion to renew, but such motions must be brought while the case is still *sub judice* -- in other words, before the time to appeal the order has expired. See *Practice Commentary to Rule 2221*, McKinney’s Cons. Laws of NY, §C2221: 9A, p. 291; *Eagle v. Persaud*, 1 A.D.3d 356 (2d Dept. 2003); *Odessa Medical Supply v. GEICO*, 18 Misc.3d 722, 725 (Bx. Co. Civ. Ct. 2007) (motion to renew timely so long as appeal was still pending) . As demonstrated below, these criteria are met in this case.
4. Mr. [REDACTED] filed his original petition with the Court on September 28, 2009, while he was in the custody of the New York State Department of Correctional Services, serving a 4½-to-9-year sentence following his conviction, by guilty plea, under New York County Indictment Number 599/97 of third-degree criminal sale of a controlled substance, a Class B drug felony. In addition to other materials offered in support of the motion, the defense provided a report by Forensic Social Worker Siobhan Morris, LMSW, CASAC. In her report, Ms. Morris details Mr. [REDACTED] background, his struggles with substance abuse and his efforts to reform himself while incarcerated.

5. On or about December 18, 2009, the People filed a response opposing Mr. ██████ resentencing petition. Among other arguments, the People claimed that Mr. ██████ was ineligible for resentencing because he was then in custody on a violation of parole. The People further argued that substantial justice dictated the denial of Mr. ██████ petition.
6. On January 25, 2010, Mr. ██████ filed a reply, addressing both the People's eligibility and substantial justice arguments.
7. On June 25, 2010, this Court issued a decision and order denying the motion for resentencing. Citing the First Department's then-controlling decision in *People v. Pratts*, 74 A.D.3d 536 (2010), the Court held that Mr. ██████ was ineligible for resentence because he was incarcerated on a parole violation. The Court did not reach the substantial justice issue.
8. On July 16, 2010, Mr. ██████ filed a timely notice of appeal. The direct appeal remains pending.
9. On June 28, 2011, the Court of Appeals reversed the First Department's decision in *Pratts* and held that parole violators were, indeed, eligible to seek resentencing under the DLRA. *People v. Paulin*, 2011 WL 34137 (June 28, 2011).
10. Mr. ██████ is presently incarcerated at Queensboro Correctional Facility on a violation of parole. He is scheduled to be released on August 9, 2011. The violation of parole stems from his convictions, on July 17,

2010, and August 23, 2010, of seventh-degree criminal possession of a controlled substance.

11. While in custody on the violation, Mr. [REDACTED] has again made efforts to come to grips with his addiction, successfully completing a six-month RSAT program at Marcy Correctional Facility. See Exhibit B. Upon his release, he will enter a treatment program run by VIP Community Services in the Bronx. See Exhibit C.
12. The \$15 drug sale underlying this indictment occurred nearly 15 years ago. The evidence overwhelmingly suggests that this offense, like all of Mr. [REDACTED] offenses, stems directly from his own intractable drug addiction – a disease that he has repeatedly sought to address, most recently during his latest incarceration at Marcy. Without in any way diminishing the harm caused by the street drug trade and without excusing Mr. [REDACTED] past inability to overcome his illness, it is fair to say that a decade-and-a-half of supervision for a case of this nature is inconsistent with the policies underlying Rockefeller Drug Law Reform. Mr. [REDACTED] is not someone who has denied the existence of his illness or failed to take steps to treat it. To the contrary, his efforts have been recognized as sincere and sustained. He is not a violent man and his recent conflicts with the law have involved the possession (and not the sale) of misdemeanor amounts of narcotics. The Court should resentence him to the minimum determinate prison sentence and the minimum term of PRS.

WHEREFORE, for the reasons stated herein as well as those set forth in Mr. [REDACTED] original motion papers, the Court should vacate the existing indeterminate sentence and resentence Mr. [REDACTED] to the minimum determinate and PRS terms.

Dated: New York, New York
July 22, 2011

RICHARD JOELSON