

SUPREME COURT OF THE STATE OF NEW YORK
CRIMINAL TERM PART IV

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

vs.

Application for Resentencing
Indictment # _____
Index # _____

JOHN DOE,

Defendant.

STATE OF NEW YORK)
COUNTY OF ONONDAGA) SS.:

John Doe, being duly sworn, deposes and states that:

1. I am the defendant in the above captioned matter.
2. This application for resentencing is made pursuant to the so-called “Rockefeller Drug Law Reform” legislation, signed by Governor Pataki on December 14, 2004, the resentencing provisions of which are effective January 13, 2005, and are contained in Section 23 of Chapter 738 of the Session Laws of New York for 2004 (L 2004, ch 738, §23) and which were provided for in Assembly Bill A11895 and Senate Bill S7802.
3. Defendant does hereby apply to be resentenced in accordance with Penal Law §70.71.
4. Defendant is currently in the custody of the Department of Correctional Services having been convicted of a class A-I felony offense defined in article 220 of the Penal Law which offense was committed prior to January 13, 2005 and was sentenced to an indeterminate sentence of imprisonment with a minimum period not less than fifteen years pursuant to provisions of the law in effect prior to January 13, 2005.
5. Defendant was convicted of the class A-I felony offense of criminal possession of a controlled substance in the first degree, Penal Law §220.21(1), and was sentenced by Hon. Judge William Burke to an indeterminate sentence of 25 years to life, on April 1, 1990.

6. The facts and circumstances relevant to the imposition of a new sentence are as follow:

- A. Defendant was only 19 years old at the time of the offense.
- B. Defendant has maintained a good prison record.
- C. Defendant is currently in ill health.
- D. Defendant has completed his GED, has earned a vocational trade certificate, and earned an ASAT certificate.
- E. **(INSERT OTHER MITIGATING FACTORS)**

7. The Defendant's Pre-sentence Memorandum prepared by the Center for Community Alternatives and dated January 13, 2005 is incorporated by reference and is annexed hereto as Exhibit A.

8. There are no findings of fact that would cause this court to determine that substantial justice dictates that this application should be denied.

9. Resentencing in the instant case is consistent with the justification provided by the legislature for the reform of the sentencing structure that serves as a basis for this application. New York's "Rockefeller Drug Laws" have been the subject of intense criticism for many years. The legislature recently recognized that such laws "provide inordinately harsh punishment for low level non-violent drug offenders, warehouse offenders in state prison who could more productively be placed into effective drug treatment programs, and waste valuable state tax dollars which could be used more effectively to provide drug treatment to addicts ..." In light of the legislative rationale for the reform of the law, the sentence of the defendant should be vacated and he should be resentenced to less harsh punishment. The ameliorative change of the new determinate sentencing scheme is a recognition that our previous laws were too harsh and inhumane. In light of the legislative determination that under the old sentencing scheme the unduly harsh penalties serve no valid penological purpose, the sentence the defendant is now

serving should be replaced by a less harsh and more humane sentence consistent with our current standards of fair and appropriate punishment.

WHEREFORE, the defendant requests this court issue an order specifying and informing the defendant of the term of a determinate sentence of imprisonment it would impose upon such conviction as authorized for a class A-I felony by and in accordance with Penal Law §70.71, and provide the defendant the opportunity to determine whether he wishes to either withdraw his application or appeal from such order, or proceed with the vacating of the current indeterminate sentence and be resentenced to a determinate sentence in accordance with Penal Law §70.71.

JOHN DOE

Sworn to before me this ____ day
of _____, 2005.

Notary Public