

COUNTY COURT
STATE OF NEW YORK COUNTY OF ONONDAGA

CRIMINAL DIVISION
Index # 09-1190
Indictment No. 2009-0952-1

PEOPLE OF THE STATE OF NEW YORK

vs.

DECISION
AND ORDER

ADOLFO TAVERAS,

Defendant.

DECISION after argument before HON. JEFFREY R. MERRILL, Acting
County Court Judge, on the 8th day of December, 2009.

APPEARANCES:

For the People:

William J. Fitzpatrick, Esq.
Onondaga County District Attorney
4th Floor, Criminal Courts Building
Syracuse, New York 13202
By: Brian J. Counihan, Esq.

For the Defendant:

Marc Waldauer, Esq.
447 E. Washington Street
Syracuse, New York 13202

Defendant is charged in a four count indictment with criminal sale of a controlled substance in the third degree (two counts) and criminal possession of a controlled substance in the third degree (two counts). Defendant requested participation in the judicial diversion program pursuant to article 216 of the CPL. On November 5, 2009 a hearing was held in accordance with CPL 216.05(3). The court found defendant eligible for acceptance into the judicial diversion program over the People's objection.

At plea allocution the People insisted that defendant enter a guilty plea to all four

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counts of the indictment. Defendant refused to plead guilty to all four counts. The People contended that CPL 216.05(4) requires a guilty plea to all counts before the court can grant judicial diversion. The defendant argued to the contrary.

The subject statute, CPL 216.05(4), provides, as pertinent, as follows: "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 statute further states that a guilty plea may not be required under certain "exceptional circumstances" not applicable here.

For its authority the People rely upon CPL 220.10 which sets forth the types of pleas which may be entered when an indictment is pending. Subdivision 4, paragraph (a) of the statute permits a defendant to plead guilty to "one or more but not all of the offenses charged" in a multi-count indictment but only upon "both the permission of the court and the consent of the people." The court concurs with the People to the extent that this CPL section is dispositive of the issue in non-judicial diversion cases. In CPL article 216 judicial diversion cases, however, the plea constraints of CPL 220.10 are not controlling.

Honorable Barry Kamins, Administrative Judge for Criminal Matters in the Second Judicial District, declared that the latest drug reform law, which includes the new CPL article 216 "dramatically changes the Rockefeller Drug Laws and provides for substantial amelioration of their harshest provisions" (Kamins, New 2009 Drug Crime Legislation - Drug Law Reform Act of 2009, NYSBA, NY Crim Law Newsletter, Vol 7, No 4 [Fall 2009]). The sweeping changes emphasize and encourage the drug treatment disposition as an alternative to a straight prison sentence.

The plain language of CPL article 216 evinces the intent of the legislature to

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allow the judiciary to tailor appropriate drug treatment programs for those defendants found to meet the eligibility requirements. It is the court that sets the parameters for treatment. Concomitantly, it is the court that has been given the authority to fashion suitable plea bargains. The court has been given control of defendant's treatment program from start to finish.

The judicial diversion program is a unique promulgation of the legislature. To aid its implementation, the chief administrator of the courts has been charged with the additional duty to ensure that cases eligible for diversion are assigned to judges who are in the best position to provide effective supervision over such cases (see Judiciary Law §212(2)(f)). Clearly, the legislative impetus is to divert more defendants from incarceration to treatment.

The People's demand of a guilty plea to every count of an indictment is a disincentive to a defendant's entry into the judicial diversion program. The People's position is contrary to the legislative intent and spirit of CPL article 216

Accordingly, it is the determination of this court that the CPL 216.05(4) language that "the eligible defendant shall be required to enter a plea of guilty to the charge or charges" does not mandate entry of a guilty plea to each and every count of a multi-count indictment prior to defendant's entry into the judicial diversion program.

This constitutes the decision and order of the court

ENTER

HON. JEFFREY R. MERRILL
Acting County Court Judge

Dated: January 4, 2010
Syracuse, New York

FILED & ENTERED
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