

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

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

vs.

Affidavit in Support of
Motion for Resentencing
Indictment # _____
Index # _____

NOTTA KINGPIN,
Defendant.

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

Ima Zealous, being duly sworn, deposes and states that:

1. I am an attorney duly licensed to practice in the State of New York. I represent Notta Kingpin on this motion for re-sentencing and am submitting this motion pursuant to the 2009 Drug Law Reform legislation, embodied in section 9, Chapter 56 of the Laws of New York, and signed by Governor Paterson on April 7, 2009. This legislation enacted a new Criminal Procedure Law (CPL) provision, § 440.46, which has an effective date of October 7, 2009.

2. In accordance with CPL § 440.46, I hereby move this Court for an order resentencing Notta Kingpin in accordance with Penal Law §§ 60.04 and 70.70.

3. Ms. Kingpin is currently in the custody of the Department of Correctional Services having been convicted of a class B felony drug offense defined in Article 220 of the Penal Law, which was committed prior to January 13, 2005. She was sentenced to an indeterminate sentence of imprisonment with a maximum term of imprisonment greater than 3 years. This sentence was imposed pursuant to provisions of the law that were in effect prior to January 13, 2005.

4. Ms. Kingpin was convicted of the class B felony offense of criminal possession of a controlled substance in the third degree, Penal Law §220.16, and on April 1, 1995, was sentenced by Hon. Duda Wright to an indeterminate sentence of 8 ½ to 25 years. She was also convicted of a class C felony drug offense of criminal possession of a controlled substance in the fourth degree and on the same date and sentenced to a concurrent term of 5 to 15 years.

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

A. Ms. Kingpin was only 19 years old at the time of the offense.

B. She has maintained a positive institutional record, as described below:

1. Ms. Kingpin has had no [serious] disciplinary infractions. (Attached is computer print-out of her Inmate Disciplinary History). *[Discuss disciplinary history, noting a clean disciplinary record or only minor disciplinary (Tier I or II) infractions];*

2. She has participated in [been willing to participate in] substance abuse treatment and has completed the Alcohol and Substance Abuse Treatment (ASAT) program. (Attached is a certificate of completion). *[Discuss substance abuse treatment participation and attainment of certificates of completion. Pay particular attention to completion of substance abuse programming, including ASAT, CASAT, MICA, etc. Also discuss participation in AA or other treatment/recovery programs. If client has not completed substance abuse treatment, discuss why so as to show that client has been willing to participate. Reasons can include being on waiting list for treatment; awaiting transfer to a facility that has the treatment program, etc.]*

3. Ms. Kingpin has also successfully participated in other programs. She obtained her GED in 1997. In 1996, she completed Phase One of the Transitional program; three years later, in 2000, she completed Phase Two, and in 2002, she completed Phases Three. (Attached are certificates of completion). For the past three years, Ms. Kingpin has been the inmate facilitator for Phase Three of the transitional program. She has also achieved vocational training certificates in the following areas. [*Discuss program participation in addition to substance abuse treatment, including attainment of GED, vocational certificate, etc. Attach relevant certificates of completion*]

C. (INSERT OTHER MITIGATING FACTORS)

6. Ms. Kingpin's Pre-sentence Memorandum prepared by the Center for Community Alternatives and dated October 7, 2009 is incorporated by reference and is annexed hereto as Exhibit A.

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

8. Resentencing in the instant case is consistent with the justification behind New York's drug law reform legislation. New York's "Rockefeller Drug Laws" have been the subject of intense criticism for many years, and in 2004 New York's legislature initiated drug law reform in recognition that New York's drug 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 ..." Governor David Paterson

reiterated this point in enacting the more recent 2009 changes, stating, “I have seen too many lives destroyed by outrageously harsh and ineffective mandatory sentencing laws...” March 27, 2009 Press Release, available at www.state.ny.us/governor/press_0327091_print.html.

9. In light of the legislative rationale for this reform, Ms. Kingpin’s sentence should be vacated and she 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 Ms. Kingpin 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 her of the term of a determinate sentence of imprisonment it would impose upon such conviction as authorized for a class B felony by and in accordance with Penal Law §§ 60.04 and 70.70, and provide the defendant the opportunity to determine whether she wishes to either withdraw her 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 §§ 60.04 and 70.70. Moreover, as provided in CPL § 440.46(2), Ms. Kingpin also seeks an order for the same relief with regard to the class C felony drug offense, the sentence for which was imposed at the same time as the class B felony.

Ima Zealous

Sworn to before me this ____ day
of _____, 2009.

Notary Public