S T A T E O F N E W Y O R K

5079

2009-2010 Regular Sessions

I N A S S E M B L Y

February 10, 2009

Introduced by M. of A. LENTOL -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to the sentencing of certain persons convicted of criminal possession of a controlled substance in the first or second degree

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 2 of section 60.05 of the penal law, as amended by chapter 738 of the laws of 2004, is amended to read as follows:

2. Class A felony. Except as provided in subdivisions three and four of section 70.06 of this chapter, every person convicted of a class A felony must be sentenced to imprisonment in accordance with section 70.00 of this title, unless such person is convicted of murder in the first degree and is sentenced in accordance with section 60.06 of this article, OR POSSESSION OF A CONTROLLED SUBSTANCE IN THE FIRST OR SECOND DEGREE AND IS SENTENCED IN ACCORDANCE WITH SECTION 60.14 OF THIS ARTICLE.

S 2. The penal law is amended by adding a new section 60.14 to read as follows:

S 60.14 AUTHORIZED DISPOSITION; CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE FIRST OR SECOND DEGREE.

1. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION TWO OF SECTION 60.05, THE COURT MAY, IN THE FURTHERANCE OF JUSTICE, IMPOSE UPON A PERSON CONVICTED OF THE CLASS A-I FELONY OF CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE FIRST DEGREE AS DEFINED IN SECTION 220.21 OF THIS CHAPTER, OR THE CLASS A-II FELONY OF CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE SECOND DEGREE AS DEFINED IN SECTION 220.18 OF THIS CHAPTER, A SENTENCE AUTHORIZED TO BE IMPOSED HAD THE PERSON BEEN CONVICTED OF CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE THIRD DEGREE, AS DEFINED IN SECTION 220.16 OF THIS CHAPTER.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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2. SENTENCE MAY BE IMPOSED IN ACCORDANCE WITH SUBDIVISION ONE OF THIS SECTION WHERE THE COURT DETERMINES THAT UPON CONSIDERATION OF THE FACTORS SPECIFIED IN SUBDIVISION ONE OF SECTION 210.40 OF THE CRIMINAL PROCEDURE LAW IMPOSING SUCH A SENTENCE WOULD BE IN THE INTEREST OF JUSTICE.

3. IN ADDITION TO THE FACTORS SPECIFIED IN SUBDIVISION ONE OF SECTION 210.40 OF THE CRIMINAL PROCEDURE LAW THE COURT MAY CONSIDER THE FOLLOWING FACTORS:

(A) THE DEFENDANT'S CONDUCT, FOR WHICH THE DEFENDANT WAS CONVICTED, WAS LIMITED TO A SINGLE INCIDENT;

(B) THE DEFENDANT'S CONDUCT WAS ISOLATED FROM THE CRIMINAL CONDUCT OF OTHERS EXCEPT INSOFAR AS ANOTHER PERSON SO SOLICITED, REQUESTED, COMMANDED, IMPORTUNED OR INTENTIONALLY AIDED THE DEFENDANT TO RECEIVE, POSSESS, TRANSPORT AND/OR DELIVER THE CONTROLLED SUBSTANCE, AND THE DEFENDANT DID SO;

(C) THE DEFENDANT HAD NO OTHER PARTICIPATION OR INTEREST IN OR CONNECTION TO ANY BROADER CRIMINAL TRANSACTION, CONSPIRACY OR ENTERPRISE TO WHICH THE DEFENDANT'S CONDUCT RELATED.

4. THE DEFENDANT AND THE DISTRICT ATTORNEY SHALL HAVE AN OPPORTUNITY TO PRESENT RELEVANT INFORMATION TO ASSIST THE COURT IN MAKING A DETERMINATION PURSUANT TO SUBDIVISIONS TWO AND THREE OF THIS SECTION, AND THE COURT MAY, IN ITS DISCRETION, CONDUCT A HEARING WITH RESPECT TO ANY ISSUE BEARING UPON SUCH DETERMINATION.

5. WHEN A COURT DETERMINES TO IMPOSE, OR IS REQUESTED AND DETERMINES NOT TO IMPOSE, A SENTENCE AUTHORIZED BY THIS SECTION, THE COURT SHALL MAKE A STATEMENT ON THE RECORD OF THE FACTS AND CIRCUMSTANCES UPON WHICH SUCH DETERMINATION IS BASED.

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.