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2009-2010 Regular Sessions

I N A S S E M B L Y

April 20, 2009

Introduced by M. of A. GOTTFRIED, KELLNER, DINOWITZ, BENEDETTO, BENJAMIN, CHRISTENSEN, COOK, GALEF, GLICK, HOYT, JAFFEE, KOON, LANCMAN, MENG, MILLMAN, PAULIN, REILLY, ROSENTHAL, STIRPE, WRIGHT -- Multi-Sponsored by -- M. of A. AMEDORE, BARRON, CROUCH, FIELDS, HOOPER, JOHN, McDONOUGH, McENENY, PHEFFER, ROBINSON, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to victims of sex trafficking convicted of prostitution offenses

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

1 Section 1. Paragraph (h) of subdivision 1 of section 440.10 of the
2 criminal procedure law is amended and a new paragraph (i) is added to
3 read as follows:

4 (h) The judgment was obtained in violation of a right of the defend-
5 ant under the constitution of this state or of the United States[.]; OR

6 (I) THE JUDGMENT IS A CONVICTION WHERE THE ARRESTING CHARGE WAS UNDER
7 SECTION 240.37 (LOITERING FOR THE PURPOSE OF ENGAGING IN A PROSTITUTION
8 OFFENSE, PROVIDED THAT THE DEFENDANT WAS NOT ALLEGED TO BE LOITERING FOR
9 THE PURPOSE OF PATRONIZING A PROSTITUTE OR PROMOTING PROSTITUTION) OR
10 230.00 (PROSTITUTION) OF THE PENAL LAW, AND THE DEFENDANT'S PARTIC-
11 IPATION IN THE OFFENSE WAS A RESULT OF HAVING BEEN A VICTIM OF SEX TRAF-
12 FICKING UNDER SECTION 230.34 OF THE PENAL LAW OR TRAFFICKING IN PERSONS
13 UNDER THE TRAFFICKING VICTIMS PROTECTION ACT (UNITED STATES CODE, TITLE
14 22, CHAPTER 78); PROVIDED THAT

15 (I) A MOTION UNDER THIS PARAGRAPH SHALL BE MADE WITH DUE DILIGENCE,
16 AFTER THE DEFENDANT HAS CEASED TO BE A VICTIM OF SUCH TRAFFICKING OR HAS
17 SOUGHT SERVICES FOR VICTIMS OF SUCH TRAFFICKING, SUBJECT TO REASONABLE
18 CONCERNS FOR THE SAFETY OF THE DEFENDANT, FAMILY MEMBERS OF THE DEFEND-
19 ANT, OR OTHER VICTIMS OF SUCH TRAFFICKING THAT MAY BE JEOPARDIZED BY THE
20 BRINGING OF SUCH MOTION, OR FOR OTHER REASONS CONSISTENT WITH THE
21 PURPOSE OF THIS PARAGRAPH; AND

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

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1 (II) OFFICIAL DOCUMENTATION OF THE DEFENDANT'S STATUS AS A VICTIM OF
2 SEX TRAFFICKING OR TRAFFICKING IN PERSONS AT THE TIME OF THE OFFENSE
3 FROM A FEDERAL, STATE OR LOCAL GOVERNMENT AGENCY SHALL CREATE A PRESUMP-
4 TION THAT THE DEFENDANT'S PARTICIPATION IN THE OFFENSE WAS A RESULT OF
5 HAVING BEEN A VICTIM OF SEX TRAFFICKING OR TRAFFICKING IN PERSONS, BUT
6 SHALL NOT BE REQUIRED FOR GRANTING A MOTION UNDER THIS PARAGRAPH.

7 S 2. Paragraph (b) of subdivision 2 of section 440.10 of the criminal
8 procedure law is amended to read as follows:

9 (b) The judgment is, at the time of the motion, appealable or pending
10 on appeal, and sufficient facts appear on the record with respect to the
11 ground or issue raised upon the motion to permit adequate review thereof
12 upon such an appeal. THIS PARAGRAPH SHALL NOT APPLY TO A MOTION UNDER
13 PARAGRAPH (I) OF SUBDIVISION ONE OF THIS SECTION; or

14 S 3. Paragraph (a) of subdivision 3 of section 440.10 of the criminal
15 procedure law is amended to read as follows:

16 (a) Although facts in support of the ground or issue raised upon the
17 motion could with due diligence by the defendant have readily been made
18 to appear on the record in a manner providing adequate basis for review
19 of such ground or issue upon an appeal from the judgment, the defendant
20 unjustifiably failed to adduce such matter prior to sentence and the
21 ground or issue in question was not subsequently determined upon appeal.
22 This paragraph does not apply to a motion based upon deprivation of the
23 right to counsel at the trial or upon failure of the trial court to
24 advise the defendant of such right, OR TO A MOTION UNDER PARAGRAPH (I)
25 OF SUBDIVISION ONE OF THIS SECTION; or

26 S 4. Subdivision 4 of section 440.10 of the criminal procedure law is
27 amended to read as follows:

28 4. If the court grants the motion, it must, except as provided in
29 subdivision five OR SIX OF THIS SECTION, vacate the judgment, and must
30 dismiss the accusatory instrument, or order a new trial, or take such
31 other action as is appropriate in the circumstances.

32 S 5. Subdivisions 6 and 7 of section 440.10 of the criminal procedure
33 law are renumbered subdivisions 7 and 8 and a new subdivision 6 is added
34 to read as follows:

35 6. IF THE COURT GRANTS A MOTION UNDER PARAGRAPH (I) OF SUBDIVISION ONE
36 OF THIS SECTION, IT MUST VACATE THE JUDGMENT AND DISMISS THE ACCUSATORY
37 INSTRUMENT, AND MAY TAKE SUCH ADDITIONAL ACTION AS IS APPROPRIATE IN THE
38 CIRCUMSTANCES.

39 S 6. This act shall take effect immediately and shall apply to
40 convictions taking place before or after it takes effect.