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

4429

2009-2010 Regular Sessions

I N S E N A T E

April 23, 2009

Introduced by Sen. DUANE -- read twice and ordered printed, and when printed to be committed 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:

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

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

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

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

(II) OFFICIAL DOCUMENTATION OF THE DEFENDANT'S STATUS AS A VICTIM OF SEX TRAFFICKING OR TRAFFICKING IN PERSONS AT THE TIME OF THE OFFENSE FROM A FEDERAL, STATE OR LOCAL GOVERNMENT AGENCY SHALL CREATE A PRESUMPTION THAT THE DEFENDANT'S PARTICIPATION IN THE OFFENSE WAS A RESULT OF

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

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HAVING BEEN A VICTIM OF SEX TRAFFICKING OR TRAFFICKING IN PERSONS, BUT SHALL NOT BE REQUIRED FOR GRANTING A MOTION UNDER THIS PARAGRAPH.

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

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

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

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

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

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

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

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

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