STATE OF NEW YORK

5964

2019-2020 Regular Sessions

IN ASSEMBLY

February 20, 2019

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

AN ACT to amend the penal law and the criminal procedure law, in relation to reducing certain sentences of imprisonment for misdemeanors to three hundred sixty-four days

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions 1 and 3 of section 70.15 of the penal law, subdivision 1 as amended by chapter 291 of the laws of 1993, are amended to read as follows:

1. Class A misdemeanor. A sentence of imprisonment for a class A misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed [~~one year; provided, however, that a sentence of imprisonment imposed upon a conviction of criminal possession of a weapon in the fourth degree as defined in subdivision one of section 265.01 must be for a period of no less than one year when the conviction was the result of a plea of guilty entered in satisfaction of an indictment or any count thereof charging the defendant with the class D violent felony offense of criminal possession of a weapon in the third degree as defined in subdivision four of section 265.02, except that the court may impose any other sentence authorized by law upon a person who has not been previously convicted in the five years immediately preceding the commission of the offense for a felony or a class A misdemeanor defined in this chapter, if the court having regard to the nature and circumstances of the crime and to the history and character of the defendant, finds on the record that such sentence would be unduly harsh and that the alternative sentence would be consistent with public safety and does not deprecate the seriousness of the crime~~] **three hundred sixty-four days**.

3. Unclassified misdemeanor. A sentence of imprisonment for an unclassified misdemeanor shall be a definite sentence. When such a sentence is

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

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imposed the term shall be fixed by the court, and shall be in accordance with the sentence specified in the law or ordinance that defines the crime **but, in any event, it shall not exceed three hundred sixty-four days**.

§ 2. Section 70.15 of the penal law is amended by adding a new subdivision 1-a to read as follows:

1-a. (a) Notwithstanding the provisions of any other law, whenever the phrase "one year" or "three hundred sixty-five days" or "365 days" or any similar phrase appears in any provision of this chapter or any other law in reference to the definite sentence or maximum definite sentence of imprisonment that is imposed, or has been imposed, or may be imposed after enactment of this subdivision, for a misdemeanor conviction in this state, such phrase shall mean, be interpreted and be applied as three hundred sixty-four days.

(b) The amendatory provisions of this subdivision are ameliorative and shall apply to all persons who are sentenced before, on or after the effective date of this subdivision, for a crime committed before, on or after the effective date of this subdivision.

(c) Any sentence for a misdemeanor conviction imposed prior to the effective date of this subdivision that is a definite sentence of imprisonment of one year, or three hundred sixty-five days, shall, by operation of law, be changed to, mean and be interpreted and applied as a sentence of three hundred sixty-four days. In addition to any other right of a person to obtain a record of a proceeding against him or her, a person so sentenced prior to the effective date of this subdivision shall be entitled to obtain, from the criminal court or the clerk thereof, a certificate of conviction, as described in subdivision one of section 60.60 of the criminal procedure law, setting forth such sentence as the sentence specified in this paragraph.

(d) Any sentence for a misdemeanor conviction imposed prior to the effective date of this subdivision that is other than a definite sentence of imprisonment of one year may be set aside, upon motion of the defendant under section 440.20 of the criminal procedure law based on a showing that the judgment and sentence under the law in effect at the time of conviction imposed prior to the effective date of this subdivision is likely to result in severe collateral consequences, in order to permit the court to resentence the defendant in accordance with the amendatory provisions of this subdivision.

(e) Resentence by operation of law is without prejudice to an individual seeking further relief pursuant to paragraph (i) of subdivision one of section 440.10 of the criminal procedure law. Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the individual.

§ 3. Paragraph (i) of subdivision 1 of section 440.10 of the criminal procedure law, as amended by chapter 368 of the laws of 2015, the opening paragraph as amended by chapter 189 of the laws of 2018, is amended and a new paragraph (j) is added to read as follows:

(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 person for prostitution or promoting prostitution) or 230.00 (prostitution) or 230.03 (prostitution in a school zone) 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, sex trafficking of a child under section 230.34-a of the penal law, labor trafficking under section 135.35 of the

penal law, aggravated labor trafficking under section 135.37 of the penal law, compelling prostitution under section 230.33 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 compelling prostitution crime or has sought services for victims of such trafficking or compelling prostitution crime, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking or compelling prostitution crime 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 trafficking, compelling prostitution 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 having been a victim of sex trafficking, compelling prostitution or trafficking in persons, but shall not be required for granting a motion under this paragraph[~~.~~]**; or**

(j) The judgment is a conviction for a class A or unclassified misdemeanor entered prior to the effective date of this paragraph and satisfies the ground prescribed in paragraph (h) of this subdivision. There shall be a rebuttable presumption that a conviction by plea to such an offense was not knowing and voluntary, based on severe or ongoing collateral consequences, including potential or actual immigration consequences, and there shall be a rebuttable presumption that a conviction by verdict constitutes cruel and unusual punishment under section five of article one of the state constitution based on such consequences.

§ 4. Section 440.10 of the criminal procedure law is amended by adding a new subdivision 9 to read as follows:

9. Upon granting of such a motion, the court may either:

(a) With the consent of the people, vacate the judgment or modify the judgment by reducing it to one of conviction for a lesser offense; or

(b) Vacate the judgment and order a new trial wherein the defendant enters a plea to the same offense in order to permit the court to resentence the defendant in accordance with the amendatory provisions of subdivision one-a of section 70.15 of the penal law.

§ 5. This act shall take effect immediately.