

# STATE OF NEW YORK

9868

## IN ASSEMBLY

February 20, 2020

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

AN ACT to amend the criminal procedure law, in relation to authorizing courts to reduce or modify sentences for certain individuals when such sentence is deemed excessive

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

1 Section 1. Section 440.20 of the criminal procedure law is amended by  
2 adding a new subdivision 5 to read as follows:

3 5. (a) Upon motion of an eligible individual, the court in which judg-  
4 ment was entered may reduce or modify the sentence on the ground that  
5 such sentence is greater than necessary to achieve the purposes of  
6 sentencing. Subdivision two of this section shall not apply to a motion  
7 brought under this subdivision.

8 (b) An individual shall be eligible for relief under this subdivision  
9 when he or she:

10 (i) has been convicted, either by plea or verdict, of a felony  
11 offense; or

12 (ii) has appealed a judgment or sentence that is the subject of relief  
13 pursuant to this section. Nothing in this subparagraph shall be  
14 construed to require that the defendant has taken a direct appeal in  
15 order to be eligible for relief pursuant to this section.

16 (c) Notwithstanding the provisions of paragraph (b) of this subdivi-  
17 sion, an otherwise ineligible individual shall be deemed eligible upon  
18 consent of the district attorney.

19 (d) An individual who is serving the minimum sentence permitted under  
20 the penal law shall not be eligible under this subdivision.

21 (e) A motion brought pursuant to this subdivision shall be referred  
22 for determination to the judge or justice who imposed the original  
23 sentence upon such individual. If, at the time of the application, the  
24 original sentencing judge or justice is no longer a judge or justice of  
25 a court of competent jurisdiction, then the application shall be  
26 assigned to another judge or justice of the court by the administrative  
27 judge of the applicable court.

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

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1 (f) In deciding the motion, the court shall consider the principles of  
2 rehabilitation, punishment and deterrence, the rehabilitation demon-  
3 strated by the defendant, and the promotion of the individual's success-  
4 ful reentry and reintegration into society, as well as public safety.  
5 The court may consider any facts or circumstances relevant to the impo-  
6 sition of a new sentence that are submitted by such individual or the  
7 district attorney, including, but not limited to:

8 (i) age, personal circumstances, and medical condition, including  
9 conditions that existed at the time of the original sentencing;

10 (ii) the defendant's institutional record of confinement;

11 (iii) whether the individual has availed himself or herself of educa-  
12 tional, therapeutic, and vocational opportunities while imprisoned; and

13 (iv) any statistical evidence demonstrating excessiveness in compar-  
14 ison to other sentences of individuals for the same crime.

15 (g) The court shall not order a new pre-sentence investigation and  
16 report. The court shall offer the defendant an opportunity for a hear-  
17 ing. If the court finds that the sentence is greater than necessary to  
18 achieve the purposes of sentencing, the court shall grant the motion and  
19 enter an order modifying the sentence to any lesser authorized term of  
20 imprisonment. The order may also direct that the new sentence run  
21 concurrently with any other term of imprisonment being served by the  
22 individual. The court shall place its reasons on the record for modifi-  
23 cation of the sentence, or denial of modification.

24 (h) In the event that an individual is denied relief under this subdi-  
25 vision, or in the event that the individual is denied the full reduction  
26 sought, he or she may bring a new motion at any time after three years  
27 from the date of denial of the previous motion.

28 (i) An appeal to an intermediate appellate court may be taken as of  
29 right from an order denying a motion made pursuant to this subdivision.

30 (j) No defendant shall be required or permitted to waive eligibility  
31 for relief pursuant to this section as part of a plea of guilty,  
32 sentence or any agreement related to a conviction for a felony offense,  
33 and any such waiver shall be deemed void and wholly unenforceable.

34 (k) An order modifying the sentence pursuant to this section shall not  
35 affect the validity or status of the underlying conviction.

36 (l) Subdivision one of section seven hundred seventeen and subdivision  
37 four of section seven hundred twenty-two of the county law, and the  
38 related provisions of article eighteen-A of such law, shall apply to the  
39 preparation of and proceedings on motions pursuant to this section, as  
40 well as to any appeals taken pursuant to this subdivision.

41 § 2. This act shall take effect on the ninetieth day after it shall  
42 have become a law and shall apply to offenses committed before, on or  
43 after the date this act shall have become a law.