STATE OF NEW YORK

7681

IN SENATE

February 5, 2020

Introduced by Sen. BENJAMIN -- 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 authorizing courts to reduce or modify sentences for certain individuals when such sentence is deemed to be greater than necessary to achieve the purposes of sentencing

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

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

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

(b) An individual is eligible for relief under this subdivision when he or she:

(i) has been convicted, either by plea or verdict, of a felony offense and is in the custody of the department of corrections and community supervision;

(ii) is more than two years away from conditional release at time of filing the motion;

(iii) was sentenced to an indeterminate term with an aggregate minimum term of ten years or more or an aggregate determinate term of ten years or more;

(iv) has served (1) at least one-third of the aggregate minimum term of an indeterminate sentence or at least one-third of an aggregate determinate sentence, or (2) where the individual is serving two or more sentences that run consecutively, the time required to be served for eligibility under subparagraph (i) of this paragraph or eight and one-third years, whichever is less;

(v) is not currently serving a sentence for: an offense defined in article one hundred twenty-five, one hundred thirty or two hundred sixty-three of the penal law; or money laundering in support of terror-

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

LBD11976-02-9

ism in the first degree as defined in section 470.24 of the penal law; or money laundering in support of terrorism in the second degree as defined in section 470.23 of the penal law; or a felony crime of terrorism as defined in article four hundred ninety of the penal law, other than the crime defined in section 490.20 of such law;

(vi) is not currently serving a sentence for an offense that included as an element the infliction of serious physical injury; except that this subparagraph shall not apply when the individual's criminal liability for the offense was based solely on the physical actions or conduct of another pursuant to section 20.00 of the penal law; or

(vii) if defendant has appealed from a judgment or sentence that is the subject of relief pursuant to this section, such appeal has been finally determined. Nothing in this subparagraph shall be construed to require that the defendant has taken a direct appeal in order to be eligible for relief pursuant to this section.

(c) Notwithstanding the provisions of paragraph (b) of this subdivision, an otherwise ineligible individual shall be deemed eligible upon consent of the district attorney.

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

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

(f) In deciding the motion, the court shall consider the principles of rehabilitation, punishment and deterrence, the rehabilitation demonstrated by the defendant, and the promotion of the individual's successful reentry and reintegration into society, as well as public safety. The court may consider any facts or circumstances relevant to the imposition of a new sentence that are submitted by such individual or the district attorney, including, but not limited to:

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

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

(iii) whether the individual has availed himself or herself of educational, therapeutic, and vocational opportunities while imprisoned.

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

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

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

(j) No defendant shall be required or permitted to waive eligibility for relief pursuant to this section as part of a plea of guilty,

sentence or any agreement related to a conviction for a felony offense, and any such waiver shall be deemed void and wholly unenforceable.

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

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

§ 2. This act shall take effect immediately and shall apply to offenses committed before, on or after the date this act shall have become a law.