STATE OF NEW YORK

7715

2021-2022 Regular Sessions

IN ASSEMBLY

May 20, 2021

Introduced by M. of A. CRUZ -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to allowing predicate felony offenders to be sentenced as first felony offenders with the consent of the district attorney and the court

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

Section 1. Subdivision 5 of section 220.10 of the criminal procedure law is amended by adding a new paragraph (i) to read as follows:

(i) (i) Notwithstanding any contrary provision of article seventy of the penal law, in any case where the defendant appears to be a second felony offender or a second felony drug offender pursuant to section 400.21 of this part, a second violent felony offender pursuant to section 400.15 of this part or a persistent violent felony offender pursuant to section 400.16 of this part, the defendant may enter a plea of guilty with a promised lawful sentence for such conviction which is applicable to a conviction without any such predicate status, under the conditions outlined in this subdivision. The court shall treat any such promise in the same manner as it would any other lawful sentence promise in connection with a plea.

(ii) The sentencing of a defendant pursuant to any such plea shall not impact whether any conviction is considered a predicate felony or predicate violent felony conviction under the penal law or the criminal procedure law for any reason other than the lawful term of the imposed sentence under this subdivision. The people may require, as a condition of any such plea, that the defendant be adjudicated as a second felony offender, second felony drug offender, second violent felony offender or persistent violent felony offender, as the case may be, or may waive any such adjudication, provided, however, that if the people require any such adjudication and the defendant has not agreed to it as a condition

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

LBD09742-01-1

of the plea, the defendant may withdraw any guilty plea prior to the imposition of the sentence.

(iii) A plea of guilty may only be entered under this subdivision with both the permission of the court and the consent of the people when, upon review of the nature and circumstances of the criminal conduct, the available evidence and the history and character of the defendant, the prosecutor and the court are of the opinion that the plea is in the interests of justice. The factors warranting the plea shall be placed on the record; however, the failure to do so shall not entitle the defendant to have the plea of guilty set aside.

§ 2. This act shall take effect immediately and shall apply to pleas entered on or after such date.