§ 440.40 Motion to set aside sentence; by people.

1. At any time not more than one year after the entry of a judgment, the court in which it was entered may, upon motion of the people, set aside the sentence upon the ground that it was invalid as a matter of law.

2. Notwithstanding the provisions of subdivision one, the court must summarily deny the motion when the ground or issue raised thereupon was previously determined on the merits upon an appeal from the judgment or sentence, unless since the time of such appellate determination there has been a retroactively effective change in the law controlling such issue.

3. Notwithstanding the provisions of subdivision one, the court may summarily deny such a motion when the ground or issue raised thereupon was previously determined on the merits upon a prior motion or proceeding in a court of this state, other than an appeal from the judgment or sentence, unless since the time of such determination there has been a retroactively effective change in the law controlling such issue. Despite such circumstance, however, the court, in the interests of justice and for good cause shown, may in its discretion grant the motion if it is otherwise meritorious.

4. The motion must be made upon reasonable notice to the defendant and to the attorney if any who appeared for him in the last proceeding which occurred in connection with the judgment or sentence, and the defendant must be given adequate opportunity to appear in opposition to the motion. The defendant has a right to be present at such proceeding but may waive such right in writing. If he does not so waive it and if he is confined in a prison or other institution of this state, the court must cause him to be produced at the proceeding upon the motion.

5. An order setting aside a sentence pursuant to this section does not affect the validity or status of the underlying conviction, and after entering such an order the court must resentence the defendant in accordance with the law.

6. Upon a resentence imposed pursuant to subdivision five, the terms of which are more severe than those of the original sentence, the defendant's time for taking an appeal from the judgment is automatically extended in the manner prescribed in subdivision four of section 450.30.