Criminal Law—Power of Appellate Division to Review Indeterminate Sentence

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POWER OF APPELLATE DIVISION TO REVIEW AN INDETERMINATE SENTENCE

The imposition of an indeterminate sentence is always reviewable by the Appellate Division, but the Appellate Division may not reduce such a sentence to the minimum determinate term for that offense. This is because the Appellate Division has no power to reduce a sentence imposed to one lighter than the minimum penalty provided for that offense, and an indeterminate sentence is the minimum penalty provided by law. It is also because there can be no indulgence in the presumption that the sentencing court imposed a sentence to serve an indeterminate term as a punishment more severe than the minimum determinate term.

People v. Zuckerman recently determined that, although the Appellate Division has no power to review an indeterminate sentence when it is excessive if the defendant seeks a reduction of that sentence, it can review an indeterminate sentence when it is excessive if the defendant seeks a suspension, because the Appellate Division's power to review an indeterminate sentence depends entirely on the defendant's choice of remedy, and not on whether the sentence is appropriate.

Since the Appellate Division may not only suspend but may vacate an indeterminate sentence, where it is inappropriate, its lack of power to review an indeterminate sentence is apparently confined to the single instance where the defendant seeks a reduction of his indeterminate sentence.

DEFENDANT SERVING INDETERMINATE SENTENCE CAN BE SENTENCED TO STATE PRISON

A defendant cannot be sentenced to a State prison if the minimum sentence which can be imposed upon him is less than a year, nor can he be sentenced to a county penal institution if the maximum sentence which can be imposed upon him is more than a year. Although a defendant sentenced to an indeterminate term apparently cannot be sentenced to either place because his minimum sentence is less than a year and his maximum sentence is more than a year, Section 212 of the Correctional Law provides that every person sentenced to an indeterminate term and confined to a State prison must

33. The Parole Commission may release or parole a prisoner immediately upon commitment. N.Y. CORRECTIONAL LAW §§ 203-204.
34. People v. Porfidio, supra note 31.
35. 5 N.Y.2d 401, 185 N.Y.S.2d 8 (1959).
36. The Appellate Division erroneously interpreted the Porfidio case as holding that it lacked the power to review the indeterminate sentence because it was excessive, without distinguishing that case on the choice of remedy sought.
38. N.Y. PEN. LAW § 2182(2).
39. N.Y. PEN. LAW §§ 2181, 2182(1).
40. Defendant in this case was sentenced to a term of one day to life.