

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D28574
Y/prt

_____AD3d_____

Submitted - September 21, 2010

WILLIAM F. MASTRO, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
PLUMMER E. LOTT, JJ.

2010-00025

DECISION & ORDER

The People, etc., respondent,
v John Pipkin, appellant.

(Ind. No. 70/99)

Lynn W. L. Fahey, New York, N.Y. (David P. Greenberg of counsel).

Daniel M. Donovan, Jr., District Attorney, Staten Island, N.Y. (Morrie I. Kleinbart and Michael Shollar of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Richmond County (Rooney, J.), dated December 22, 2009, which denied his motion for resentencing pursuant to CPL 440.46 on his conviction of criminal sale of a controlled substance in the third degree, which sentence was originally imposed, upon a jury verdict, on September 24, 1999.

ORDERED that the order is affirmed.

The Supreme Court providently exercised its discretion in denying, on substantial justice grounds, the defendant's motion for resentencing pursuant to CPL 440.46 (*see* CPL 440.46[3]; *see also* L 2004, ch 738, § 23). The defendant had been convicted of two prior violent felonies, and during his approximately 10-year incarceration on the instant offense, he received disciplinary tickets for twelve Tier II and five Tier III infractions, including tickets for violent conduct and possessing contraband (*see People v Winfield*, 59 AD3d 747, 747-748; *People v Perez*, 57 AD3d 921, 922; *People v Flores*, 50 AD3d 1156, 1156-1157).

MASTRO, J.P., DICKERSON, ENG and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan

October 12, 2010

PEOPLE v PIPKIN, JOHN

Clerk of the Court

October 12, 2010

PEOPLE v PIPKIN, JOHN