

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

D28903  
O/kmg

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Submitted - October 12, 2010

PETER B. SKELOS, J.P.  
RUTH C. BALKIN  
CHERYL E. CHAMBERS  
LEONARD B. AUSTIN, JJ.

2007-05578  
2007-06886

DECISION & ORDER

The People, etc., respondent,  
v Jacqueline James, appellant.

(Ind. No. 9346/89)

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Lynn W. L. Fahey, New York, N.Y. (Barry Stendig of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Morgan J. Dennehy, and Adam M. Koelsch of counsel), for respondent.

Appeals by the defendant from (1) a judgment of the Supreme Court, Kings County (Jones, Jr., J.), rendered September 7, 2006, convicting her of criminal sale of a controlled substance in the first degree (three counts), upon a jury verdict, and imposing sentence, and (2) a resentence of the same court imposed November 29, 2006.

ORDERED that the judgment and the resentence are affirmed.

The Supreme Court properly denied that branch of the defendant's motion which was pursuant to CPL 380.30(1) to dismiss the indictment against her due to a lengthy delay in imposing sentence. The defendant absconded prior to sentencing. Although the defendant was subsequently incarcerated in Connecticut on a conviction rendered in that state, contrary to the defendant's contention, there is nothing in the record to suggest that the New York authorities were "actually aware" of the defendant's incarceration in Connecticut (*cf. People v McNeil*, 237 AD2d 622, 623). Accordingly, because the delay in sentencing was solely attributable to the defendant's conduct, and was, therefore, excusable, the Supreme Court properly denied that branch of the defendant's motion

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which was to dismiss the indictment pursuant to CPL 380.30(1) (*see People v Campbell*, 306 AD2d 495; *People v Battles*, 150 AD2d 785, 786; *People v Headley*, 134 AD2d 519).

SKELOS, J.P., BALKIN, CHAMBERS and AUSTIN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court