

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

D30017  
Y/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - January 14, 2011

DANIEL D. ANGIOLILLO, J.P.  
L. PRISCILLA HALL  
SHERI S. ROMAN  
JEFFREY A. COHEN, JJ.

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2010-00397

DECISION & ORDER

The People, etc., respondent,  
v Joel Medina, appellant.

(Ind. No. 4315/03)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Caroline R. Donhauser, and Terrence F. Heller of counsel), for respondent.

Appeal by the defendant from a resentence of the Supreme Court, Kings County (Gary, J.), imposed December 11, 2009, pursuant to CPL 440.46, after a hearing, upon his conviction of criminal sale of a controlled substance in the third degree and criminal possession of a controlled substance in the seventh degree, which sentence was originally imposed, upon his plea of guilty, on November 3, 2004.

ORDERED that the resentence is affirmed.

The Supreme Court providently exercised its discretion in resentencing the defendant to a determinate term of imprisonment of 5½ years, with 3 years of postrelease supervision (*see People v Newton*, 48 AD3d 115, 119-120). In light of the defendant's disciplinary history while incarcerated, which included 10 disciplinary citations, and his history of committing crimes while on parole, a further reduction of the defendant's sentence was not warranted (*see* CPL 440.46[3]; *People*

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*v Almanzar*, 43 AD3d 825; *cf. People v Colon*, 77 AD3d 849).

ANGIOLILLO, J.P., HALL, ROMAN and COHEN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court