

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

D30293
Y/kmb

_____AD3d_____

Submitted - February 10, 2011

A. GAIL PRUDENTI, P.J.
RANDALL T. ENG
ARIEL E. BELEN
SANDRA L. SGROI, JJ.

2010-03198

DECISION & ORDER

The People, etc., respondent,
v Glen Witkowski, appellant.

(Ind. No. 10916/03)

Lynn W. L. Fahey, New York, N.Y. (Joshua M. Levine of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Johnnette Traill, and Rona I. Kruger of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Queens County (Grosso, J.), dated March 12, 2010, which, after a hearing, denied his motion for resentencing pursuant to CPL 440.46, on his conviction of criminal possession of a controlled substance in the third degree, which sentence was originally imposed, upon his plea of guilty, on October 14, 2004.

ORDERED that the order is affirmed.

The defendant was convicted, upon his plea of guilty, of criminal possession of a controlled substance in the third degree (*see* Penal Law § 220.16), based on an offense committed in 2003, and was sentenced in October 2004 to an indeterminate term of 6 to 12 years of imprisonment. In January 2010 the defendant moved to be resentenced pursuant to CPL 440.46, which extends to certain eligible individuals in the custody of the Department of Correctional Services who were convicted of a class B felony offense defined in Penal Law article 220 committed prior to January 13, 2005, the opportunity to seek a resentence in accordance with the resentencing provisions of the Drug Law Reform Act of 2004 (*see* CPL 440.46[1], [3]; L 2004, ch 738, § 23). The Supreme Court denied the defendant's motion.

March 8, 2011

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The defendant had an extensive criminal history dating back to 1996, and the instant offense was committed two months after he was released on parole. Moreover, during the defendant's incarceration, he has committed numerous Tier 3 and Tier 2 infractions, including, among other things, carrying a concealed razor, fighting with fellow inmates, setting another inmate's bed on fire, and possession of gang-related materials. Under these circumstances, the Supreme Court providently exercised its discretion in denying the defendant's motion (*see* CPL 440.46[3]; L 2004, ch 738, § 23; *People v Winfield*, 59 AD3d 747, 748; *People v Perez*, 57 AD3d 921, 922; *People v Flores*, 50 AD3d 1156; *People v Vega*, 40 AD3d 1020, 1020-1021; *People v Sanders*, 36 AD3d 944).

PRUDENTI, P.J., ENG, BELEN and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court