

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

D30332
W/ct

_____AD3d_____

Submitted - February 23, 2011

WILLIAM F. MASTRO, J.P.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
PLUMMER E. LOTT
ROBERT J. MILLER, JJ.

2010-01762

DECISION & ORDER

The People, etc., respondent,
v Benjamin Gilliam, appellant.

(Ind. No. 75-2003)

Robert C. Mitchell, Riverhead, N.Y. (Alfred J. Cicale of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Michael J. Miller of counsel),
for respondent.

Appeal by the defendant from an order of the County Court, Suffolk County (Efman, J.), entered May 3, 2010, which, without a hearing, denied his motion for resentencing pursuant to CPL 440.46 on his convictions of criminal sale of a controlled substance in the third degree (two counts) and criminal possession of a controlled substance in the third degree (two counts), which sentence was originally imposed by the same court (Gazzillo, J.), upon his plea of guilty, on December 23, 2003. Assigned counsel has submitted a brief in accordance with *Anders v California* (386 US 738) and moves to be relieved of the assignment to prosecute this appeal.

ORDERED that the order is affirmed.

We have reviewed the record and agree with the defendant's assigned counsel that there are no nonfrivolous issues which could be raised on appeal. Counsel's application for leave to withdraw as counsel is granted (*see Anders v California*, 386 US 738; *People v Paige*, 54 AD2d 631; *cf. People v Gonzalez*, 47 NY2d 606).

MASTRO, J.P., ANGIOLILLO, BALKIN, LOTT and MILLER, JJ., concur.

ENTER:



Matthew G. Kiernan
Clerk of the Court

March 8, 2011

PEOPLE v GILLIAM, BENJAMIN