

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

D30691  
G/kmb

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

Submitted - March 17, 2011

A. GAIL PRUDENTI, P.J.  
MARK C. DILLON  
RUTH C. BALKIN  
SANDRA L. SGROI, JJ.

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2010-07367

DECISION & ORDER

The People, etc., respondent,  
v Watari Johnson, appellant.

(Ind. No. 10788/97)

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Lynn W. L. Fahey, New York, N.Y. (Andrew E. Abraham of counsel), for appellant.

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

Appeal by the defendant from an order of the Supreme Court, Queens County (Modica, J.), dated June 25, 2010, which, without a hearing, denied his motion to be resentenced pursuant to CPL 440.46 on his conviction of criminal sale of a controlled substance in the third degree, which sentence was originally imposed, after a nonjury trial, on March 4, 1998.

ORDERED that the order is reversed, on the law, and the matter is remitted to the Supreme Court, Queens County, for further proceedings on the defendant's motion.

For the reasons stated in *People v Phillips* (\_\_\_\_\_AD3d\_\_\_\_\_, 2011 NY Slip Op 02038 [2d Dept 2011]), the defendant's status as a reincarcerated parole violator did not render him ineligible to apply for resentencing pursuant to CPL 440.46. Accordingly, we remit the matter to the Supreme Court, Queens County, for further proceedings on the defendant's motion.

PRUDENTI, P.J., DILLON, BALKIN and SGROI, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court

April 5, 2011

PEOPLE v JOHNSON, WATURI