

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

D30778
G/prt

_____AD3d_____

Submitted - March 17, 2011

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

2010-02917

DECISION & ORDER

The People, etc., respondent,
v Cleo Garner, appellant.

(Ind. No. 9224/99)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Thomas M. Ross, and Terrence F. Heller of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Guzman, J.), dated March 12, 2010, which denied his motion for resentencing pursuant to CPL 440.46 on his conviction of criminal sale of a controlled substance in or near school grounds, which sentence was originally imposed, upon his plea of guilty, on May 23, 2000.

ORDERED that the appeal is dismissed.

Inasmuch as the defendant's sentence has expired (*see* Executive Law § 259-j), the defendant's appeal is academic (*see People v Hernandez*, 166 AD2d 609, 610).

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

ENTER:



Matthew G. Kiernan
Clerk of the Court

April 12, 2011

PEOPLE v GARNER, CLEO