

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

D30982
O/kmb

_____AD3d_____

Submitted - March 7, 2011

REINALDO E. RIVERA, J.P.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
SANDRA L. SGROI, JJ.

2010-00176

DECISION & ORDER

The People, etc., respondent,
v Cory Straub, appellant.

(Ind. No. 00-00381)

Steven A. Feldman, Uniondale, N.Y., for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (Lauren E. Grasso and Andrew R. Kass of counsel), for respondent.

Appeal by the defendant from an order of the County Court, Orange County (De Rosa, J.), dated December 9, 2009, which 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, upon his plea of guilty, on November 21, 2001.

ORDERED that the order is reversed, on the law, and the matter is remitted to the County Court, Orange County, for further proceedings and a new determination of the defendant's motion.

The County Court denied the defendant's motion to be resentenced under the Drug Law Reform Act of 2009 solely on the basis that his status as a reincarcerated parole violator made him ineligible for such relief. For the reasons set forth in *People v Phillips* (82 AD3d 1011), the defendant's status does not preclude the County Court from considering and determining the merits of the defendant's motion. Accordingly, we reverse the order appealed from and remit the matter to

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the County Court, Orange County, for further proceedings and a new determination of the defendant's motion.

RIVERA, J.P., ANGIOLILLO, ENG and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court