

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

D31158
W/kmb

_____AD3d_____

Submitted - April 5, 2011

MARK C. DILLON, J.P.
ANITA R. FLORIO
RUTH C. BALKIN
RANDALL T. ENG, JJ.

2010-05271

DECISION & ORDER

The People, etc., respondent,
v Luis Rivera, appellant.

(Ind. No. 10257/04)

Steven Banks, New York, N.Y. (David Crow of counsel), for appellant.

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

Appeal by the defendant from an order of the Supreme Court, Queens County (Kron, J.), dated May 25, 2010, which denied, without a hearing, 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 March 1, 2005.

ORDERED that the order is affirmed.

Contrary to the defendant's contention, the Supreme Court providently exercised its discretion in denying his motion for resentencing on substantial justice grounds. The defendant has an extensive criminal record dating back to 1989, which includes a conviction for the violent felony offense of robbery in the first degree, and two prior drug-related felonies. Further, all three of the defendant's drug-related felony offenses were committed while he was on parole. Under the circumstances, considerations of substantial justice support the Supreme Court's determination to

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deny the motion (*see People v Colon*, 77 AD3d 849, 850; *People v Curry*, 52 AD3d 732; *People v Perez*, 57 AD3d 921, 922; *People v Stamps*, 50 AD3d 827, 828; *People v Flores*, 50 AD3d 1156, 1156-1157; *People v Sanders*, 36 AD3d 944, 946-947).

DILLON, J.P., FLORIO, BALKIN and ENG, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court