

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

D31382
W/nl

_____AD3d_____

Submitted - May 3, 2011

MARK C. DILLON, J.P.
RUTH C. BALKIN
RANDALL T. ENG
SHERI S. ROMAN, JJ.

2010-07540

DECISION & ORDER

The People, etc., appellant,
v Perry Crosby, respondent.

(Ind. No. 10396/02)

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Johnnette Traill, and Brooke E. Barnes of counsel), for appellant.

Lynn W. L. Fahey, New York, N.Y. (Ellen Fried of counsel), for respondent.

Appeal by the People from a resentence of the Supreme Court, Queens County (Knopf, J.), imposed July 1, 2010, pursuant to CPL 440.46, upon the defendant's conviction of criminal possession of a controlled substance in the third degree (two counts), criminal possession of a controlled substance in the fourth degree, and criminal possession of a controlled substance in the fifth degree, upon a jury verdict.

ORDERED that the resentence is affirmed.

Contrary to the People's contention, the Supreme Court correctly measured the 10-year "look-back" period of CPL 440.46(5)(a) from the date of the defendant's resentencing motion, rather than from the date he committed the present drug felonies (*see People v Lashley*, _____ AD3d_____, 2011 NY Slip Op 03088 [2d Dept 2011]; *People v Reeb*, 82 AD3d 1620; *People v Williams*, 82 AD3d 796; *People v Hill*, 82 AD3d 77; *People v Sosa*, 81 AD3d 464). When measured from the date of the defendant's April 2010 motion for resentencing, his January 1990 convictions of assault in the second degree, class D violent felonies, were outside the 10-year look-back period, and thus did not disqualify him from eligibility for resentencing under the Drug Law

May 24, 2011

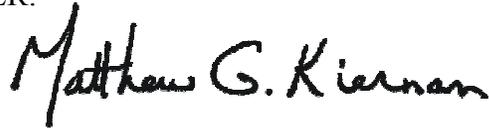
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Reform Act of 2009 (CPL 440.46).

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

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive style with a large, prominent initial "M".

Matthew G. Kiernan
Clerk of the Court