

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

D31392
W/prt

____AD3d____

Submitted - April 28, 2011

REINALDO E. RIVERA, J.P.
PETER B. SKELOS
ANITA R. FLORIO
LEONARD B. AUSTIN, JJ.

2010-09259

DECISION & ORDER

The People, etc., respondent,
v Booker Wilson, appellant.

(Ind. No. 8695/02)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Caroline R. Donhauser, and Maria Park of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Marrus, J.), dated September 8, 2010, which denied his motion for resentencing pursuant to CPL 440.46 on his conviction of conspiracy in the second degree, which sentence was originally imposed, upon his plea of guilty, on September 3, 2009.

ORDERED that the order is affirmed.

Pursuant to the clear terms of CPL 440.46, the defendant is not eligible for resentencing on his conviction of conspiracy in the second degree, since that crime is not one of the offenses enumerated in article 220 of the Penal Law (*see* CPL 440.46; *People v Williams*, ____AD3d____ [decided herewith]; *People v Murray*, 82 AD3d 794). Moreover, contrary to the defendant's contention, the constitutional principle of equal protection does not require a different result (*see People v Williams* _____AD3d_____ [decided herewith]).

RIVERA, J.P., SKELOS, FLORIO and AUSTIN, JJ., concur.

ENTER:



Matthew G. Kiernan
Clerk of the Court

May 24, 2011

PEOPLE v WILSON, BOOKER