

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

D31395
Y/kmb

_____AD3d_____

Submitted - May 3, 2011

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

2010-04113

DECISION & ORDER

The People, etc., appellant,
v Andrew Brown, respondent.

(Ind. No. 10516/95)

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

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

Appeal by the People from a resentence of the Supreme Court, Queens County (Latella, J.), imposed April 12, 2010, pursuant to CPL 440.46, upon the defendant's conviction of criminal sale of a controlled substance in the third degree and criminal sale of a controlled substance in or near school grounds, upon a jury verdict.

ORDERED that the resentence is affirmed.

Contrary to the People's contention, the defendant's status as a reincarcerated parole violator did not render him ineligible to apply for resentencing pursuant to CPL 440.46 (*see People v Johnson*, _____AD3d_____, 2011 NY Slip Op 02901 [2d Dept 2011]; *People v Phillips*, 82 AD3d 1011, *lv granted* 16 NY3d 834). "While a person's status as a parole violator may be relevant in determining whether 'substantial justice dictates that the application should be denied' on the merits (L 2004, ch 738, § 23; see CPL 440.46[3]), nothing in CPL 440.46 supports a conclusion

May 24, 2011

Page 1.

PEOPLE v BROWN, ANDREW

that such status renders a person ineligible to apply for resentencing in the first instance” (*People v Phillips*, 82 AD3d at 1012).

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

ENTER:


Matthew G. Kiernan
Clerk of the Court