

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

D31632  
Y/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - May 20, 2011

REINALDO E. RIVERA, J.P.  
PETER B. SKELOS  
L. PRISCILLA HALL  
LEONARD B. AUSTIN, JJ.

2010-02906

DECISION & ORDER

The People, etc., respondent,  
v Carlos Kelly, appellant.

(Ind. No. 5220/96)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Jodi L. Mandel, and Terrence F. Heller of counsel), for respondent.

Appeal by the defendant from a resentence of the Supreme Court, Kings County (Carroll, J.), imposed March 19, 2010, pursuant to CPL 440.46, upon his conviction of criminal possession of a controlled substance in the third degree and criminal possession of a controlled substance in the fourth degree, which sentence was originally imposed, upon a jury verdict, on December 16, 1997.

ORDERED that the resentence is affirmed.

The Supreme Court providently exercised its discretion in resentencing the defendant to a determinate term of imprisonment of nine years with three years of postrelease supervision on the conviction of criminal possession of a controlled substance in the third degree, and a concurrent determinate term of imprisonment of five years with three years of postrelease supervision on the conviction of criminal possession of a controlled substance in the fourth degree (*see People v Newton*, 48 AD3d 115, 119-120). Under the circumstances of this case, a reduction of the resentence is not

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warranted (*see People v Tutt*, 82 AD3d 1273; *People v Almanzar*, 43 AD3d 825, 826; *People v Suitte*, 90 AD2d 80).

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

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court