

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

D32018
H/nl

_____AD3d_____

Submitted - June 17, 2011

PETER B. SKELOS, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2010-07126

DECISION & ORDER

The People, etc., respondent,
v Demetrius Holder, appellant.

(Ind. No. 324/03)

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

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

Appeal by the defendant from an order of the Supreme Court, Queens County (McGann, J.), dated July 13, 2010, which denied his motion to be resentenced pursuant to CPL 440.46 on his conviction of criminal possession of a controlled substance in the third degree, which sentence was originally imposed, upon a jury verdict, on March 24, 2004. Motion by the People to dismiss the appeal on the ground that the appellant has absconded from parole supervision and is not available to obey the mandate of this Court.

Upon the papers submitted in support of the motion and the papers submitted in relation thereto, it is

ORDERED that the motion is granted; and it is further,

ORDERED that the appeal is dismissed.

Since the appellant has absconded from parole supervision and is not available to obey

August 2, 2011

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the mandate of this Court, the appeal must be dismissed (*see Molinaro v New Jersey*, 396 US 365, 366; *People v Howe*, 256 AD2d 476; *cf. People v Taveras*, 10 NY3d 227; *People v Diaz*, 7 NY3d 831).

SKELOS, J.P., BALKIN, LEVENTHAL and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court