

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

D32286
H/kmb

_____AD3d_____

Submitted - September 6, 2011

PETER B. SKELOS, J.P.
RANDALL T. ENG
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2010-06642

DECISION & ORDER

The People, etc., respondent,
v Luis Vidal, appellant.

(Ind. No. 9331/94)

Lynn W. L. Fahey, New York, N.Y. (Bonnie H. Stein of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Thomas M. Ross, and Terrence F. Heller of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Ferdinand, J.), dated June 29, 2010, which denied his motion to be resentenced pursuant to CPL 440.46 on his conviction of criminal sale of a controlled substance in the third degree, which sentence was originally imposed, upon a jury verdict, on February 22, 1995.

ORDERED that the order is reversed, on the law, and the matter is remitted to the Supreme Court, Kings County, for further proceedings and a new determination of the defendant's motion.

The Supreme Court denied the defendant's motion for resentencing solely upon the ground that his status as a reincarcerated parole violator made him ineligible for relief under the 2009 Drug Law Reform Act, which is codified by CPL 440.46. However, "prisoners who have been paroled, and then reincarcerated for violating their parole, are not for that reason barred from seeking relief under the statute" (*People v Paulin*, 17 NY3d 238, 242; see *People v Howard*, 85 AD3d 1202; *People v Phillips*, 82 AD3d 1011, 1012).

September 20, 2011

PEOPLE v VIDAL, LUIS

Page 1.

Accordingly, the order appealed from must be reversed and the matter remitted to the Supreme Court, Kings County, for further proceedings and a new determination of the defendant's motion.

SKELOS, J.P., ENG, AUSTIN and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court