

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

D32302  
C/kmb

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

Submitted - September 7, 2011

MARK C. DILLON, J.P.  
THOMAS A. DICKERSON  
JOHN M. LEVENTHAL  
LEONARD B. AUSTIN  
ROBERT J. MILLER, JJ.

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2010-07138

DECISION & ORDER

The People, etc., respondent,  
v Anthony Santiago, appellant.

(Ind. No. 12291/95)

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

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano and  
Johnnette Traill of counsel; William Palka on the brief), for respondent.

Appeal by the defendant from an order of the Supreme Court, Queens County (Erlbaum, J.), dated June 21, 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 October 21, 1996.

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

The defendant contends, and the People correctly concede, that contrary to the determination of the Supreme Court, his status as a reincarcerated parole violator did not render him ineligible to apply for resentencing pursuant to the 2009 Drug Law Reform Act, codified in CPL 440.46 (see *People v Paulin*, 17 NY3d 238; *People v Howard*, 85 AD3d 1202, 1202-1203). Accordingly, we reverse the order appealed from, and remit the matter to the Supreme Court, Queens

September 20, 2011

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County, for a new determination of the defendant's motion.

DILLON, J.P., DICKERSON, LEVENTHAL, AUSTIN and MILLER, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court