

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

D32611  
N/kmb

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

Submitted - October 5, 2011

WILLIAM F. MASTRO, J.P.  
RUTH C. BALKIN  
CHERYL E. CHAMBERS  
SANDRA L. SGROI, JJ.

2010-03572

DECISION & ORDER

The People, etc., respondent,  
v Larry Young, appellant.

(Ind. No. 12215/95)

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

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

Appeal by the defendant from an order of the Supreme Court, Queens County (Blumenfeld, J.), dated April 7, 2010, which denied his motion to be resentenced pursuant to CPL 440.46 on his convictions of criminal sale of a controlled substance in the third degree and criminal sale of a controlled substance in or near school grounds, which sentences were originally imposed, upon a jury verdict, on November 18, 1996.

ORDERED that the order is reversed, on the law, and the matter is remitted to the Supreme Court, Queens County, for further proceedings and a new determination of the defendant's motion to be resentenced pursuant to CPL 440.46.

The defendant contends, and the People correctly concede, that contrary to the determination of the Supreme Court, his release to parole during the pendency of his motion for resentencing pursuant to the Drug Law Reform Act of 2009, codified in CPL 440.46, did not render him ineligible for resentencing (*see People v Santiago*, 17 NY3d 246, 247-249). Accordingly, we reverse the order appealed from, and remit the matter to the Supreme Court, Queens County, for

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further proceedings and a new determination of the defendant's motion to be resentenced pursuant to CPL 440.46 (*see People v Rivera*, \_\_\_\_\_AD3d\_\_\_\_\_ [decided herewith]).

MASTRO, J.P., BALKIN, CHAMBERS and SGROI, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court