

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

D32803
Y/kmb

_____AD3d_____

Submitted - October 20, 2011

ANITA R. FLORIO, J.P.
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
JEFFREY A. COHEN, JJ.

2010-05201

DECISION & ORDER

The People, etc., respondent,
v Mark Stokes, appellant.

(Ind. No. 1839/99)

Lynn W. L. Fahey, New York, N.Y. (Paul Skip Laisure of counsel; Emma Brown-Bernstein on the brief), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Maria Park of counsel; Benjamin Barczewski on the brief), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Sullivan, J.), dated May 7, 2010, which denied his motion for resentencing 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 his plea of guilty, on October 29, 2002.

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

The Supreme Court denied the defendant's motion for resentencing solely on the ground that his status as a reincarcerated parole violator rendered him ineligible for relief under the Drug Law Reform Act of 2009, codified at 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; *People v Phillips*, 82 AD3d 1011, 1012).

November 9, 2011

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

FLORIO, J.P., DICKERSON, CHAMBERS and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court