

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

D33114  
C/kmb

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Submitted - November 16, 2011

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

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2010-06408

DECISION & ORDER

The People, etc., respondent,  
v James Taylor, appellant.

(Ind. No. 8776/94)

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Lynn W. L. Fahey, New York, N.Y. (Kathleen Whooley 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 (Martin, J.), dated June 22, 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 April 27, 1995.

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

The Supreme Court erred in denying the defendant's motion to be resentenced pursuant to CPL 440.46 on the ground that his status as a reincarcerated parole violator made him ineligible for relief under the 2009 Drug Law Reform Act, since "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 Vidal*, 87 AD3d 1085; *People v Santiago*, 87 AD3d 1077; *People v Howard*, 85 AD3d 1202).

Furthermore, the Supreme Court erred in denying the defendant's motion on the

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alternate ground that his release to parole after he applied for resentencing rendered him ineligible for that relief. Where, as here, the defendant applies for resentencing while still in the custody of the Department of Corrections and Community Supervision, the defendant is not rendered ineligible based upon a post-application release to parole supervision (*see People v Santiago*, 17 NY3d 246; *People v McEachin*, 87 AD3d 1165; *People v Wiggins*, 84 AD3d 1279).

Accordingly, we remit the matter to the Supreme Court, Kings County, for a new determination of the defendant's motion.

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

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court