

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

D33271
N/ct

_____AD3d_____

Submitted - November 30, 2011

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

2010-08386

DECISION & ORDER

The People, etc., respondent,
v Allen Cobb, appellant.

(Ind. No. 362-03)

Robert C. Mitchell, Riverhead, N.Y. (Alfred J. Cicale of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Edward A. Bannan of counsel),
for respondent.

Appeal by the defendant from an order of the County Court, Suffolk County (Braslow, J.), dated July 27, 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 possession of a controlled substance in the third degree, which sentences were originally imposed, upon his plea of guilty, on January 12, 2004.

ORDERED that the order is reversed, on the law, and the matter is remitted to the County Court, Suffolk County, for further proceedings pursuant to CPL 440.46.

The defendant contends, and the People correctly concede, that contrary to the determination of the County Court, his status as a reincarcerated parole violator did not render him ineligible to apply for resentencing pursuant to the Drug Law Reform Act of 2009, codified in CPL 440.46 (*see People v Paulin*, 17 NY3d 238, 241-242; *People v Vidal*, 87 AD3d 1085; *People v Santiago*, 87 AD3d 1077; *People v Howard*, 85 AD3d 1202, 1202-1203). Accordingly, the order appealed from must be reversed, and the matter remitted to the County Court, Suffolk County, for

December 13, 2011

Page 1.

PEOPLE v COBB, ALLEN

further proceedings pursuant to CPL 440.46.

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

ENTER:


Aprilanne Agostino
Clerk of the Court