

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

D33314
O/kmb

_____AD3d_____

Submitted - November 30, 2011

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

2009-11643

DECISION & ORDER

The People, etc., respondent,
v Clyde Middleton, appellant.

(Ind. No. 10992/02)

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

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

Appeal by the defendant from a resentence of the Supreme Court, Queens County (Knopf, J.), imposed November 19, 2009, pursuant to CPL 440.46, upon his conviction of criminal sale of a controlled substance in the third degree, which sentence was originally imposed, after a nonjury trial, on March 10, 2004. Assigned counsel has submitted a brief in accordance with *Anders v California* (386 US 738), in which she moves for leave to withdraw as counsel for the appellant.

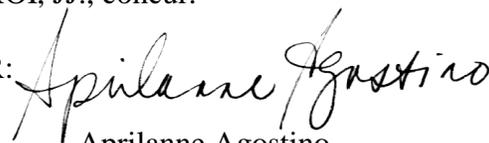
ORDERED that the appeal is dismissed as academic; and it is further,

ORDERED that assigned counsel's application for leave to withdraw as counsel is dismissed as academic.

Inasmuch as the maximum term of the defendant's resentence expired during the pendency of this appeal, the appeal has been rendered academic (*see People v Paulin*, 17 NY3d 238, 242; *People v Garner*, 83 AD3d 862).

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

ENTER:



Aprilanne Agostino
Clerk of the Court

December 20, 2011

PEOPLE v MIDDLETON, CLYDE