

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

D33905
O/kmb

_____AD3d_____

Submitted - January 24, 2012

MARK C. DILLON, J.P.
ANITA R. FLORIO
CHERYL E. CHAMBERS
SHERI S. ROMAN, JJ.

2010-10508

DECISION & ORDER

The People, etc., respondent,
v Luis Gonzalez, appellant.

(Ind. No. 3988/97)

Lynn W. L. Fahey, New York, N.Y. (Paul Skip Laisure of counsel; Peter Kapitonov on the brief), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Thomas M. Ross of counsel; Joseph N. Schneiderman on the brief), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Sullivan, J.), entered October 18, 2010, which, after a hearing, 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 (two counts), which sentences were originally imposed, upon his pleas of guilty, on October 22, 1998.

ORDERED that the order is affirmed.

The defendant moved to be resentenced pursuant to CPL 440.46, a statute which extended the availability of reduced sentencing under the Drug Law Reform Act of 2004 (L 2004, ch 738) to individuals convicted of class B drug felonies (*see* L 2004, ch 738, § 23; L 2005, ch 643, § 1). Following a hearing, the Supreme Court denied the motion.

The defendant is a repeat felony offender with a lengthy criminal history dating back to 1979, which includes four felony drug convictions. He also has incurred 32 disciplinary infractions while incarcerated and has repeatedly failed mandated drug treatment programs while in

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prison. Under these circumstances, the Supreme Court providently exercised its discretion in determining that substantial justice dictated that the defendant's motion should be denied (*see* CPL 440.46[3]; L 2004, ch 738; *People v Murray*, 89 AD3d 567; *People v Colon*, 77 AD3d 849, 850).

DILLON, J.P., FLORIO, CHAMBERS and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court