

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

D34068
H/mv

_____AD3d_____

Submitted - January 31, 2012

MARK C. DILLON, J.P.
ANITA R. FLORIO
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2011-01392

DECISION & ORDER

The People, etc., respondent,
v Christopher Alvarez, appellant.

(Ind. Nos. 12565/97)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Jodi L. Mandel, and Michael L. Brenner of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Sullivan, J.), entered February 4, 2011, which denied his motion for resentencing pursuant to CPL 440.46 on his conviction of criminal sale of a controlled substance in or near school grounds, which sentence was originally imposed, upon a jury verdict, on April 23, 1998.

ORDERED that the order is affirmed.

The Supreme Court providently exercised its discretion in denying the defendant's motion for resentencing pursuant to CPL 440.46. In addition to having been previously convicted of a violent felony and having committed the instant crime while on parole, the defendant received disciplinary tickets for 27 Tier III and 28 Tier II infractions during his approximately 12 years of incarceration prior to making his motion for resentencing. These disciplinary tickets were issued for, among other things, possession of homemade weapons, drugs, and gang-related material, arson, fighting, stealing prison materials, and stalking. While the defendant's rate of receiving infractions

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decreased after his first several years of incarceration, he received disciplinary tickets for four Tier III and two Tier II infractions during the two years immediately preceding his application for resentencing. Under these circumstances, substantial justice dictated that the motion be denied (*see People v Hickman*, 85 AD3d 1057; *People v Wilson*, 85 AD3d 1069, 1069-1070; *People v Browning*, 84 AD3d 1263, 1264; *People v Witkowski*, 82 AD3d 913; *People v Pipkin*, 77 AD3d 770, 770-771; *People v Flores*, 50 AD3d 1156, 1156-1157).

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

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court