

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

D34815
Y/nl

_____AD3d_____

Submitted - April 2, 2012

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
JOHN M. LEVENTHAL
JEFFREY A. COHEN, JJ.

2010-02904

DECISION & ORDER

The People, etc., respondent,
v Michael Barnes, appellant.

(Ind. No. 1746/01)

Lynn W. L. Fahey, New York, N.Y. (Melissa S. Horlick of counsel), for appellant.

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

Appeal by the defendant from an order of the Supreme Court, Kings County (Guzman, J.), dated March 12, 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, which sentence was originally imposed, upon his plea of guilty, on May 24, 2002.

ORDERED that the order is affirmed.

As correctly conceded by the People, the Supreme Court erroneously concluded that the defendant's status as a reincarcerated parole violator rendered him ineligible to apply for resentencing pursuant to CPL 440.46 (*see People v Paulin*, 17 NY3d 238, 241-242). However, in light of the defendant's extensive criminal history, his history of committing crimes while on parole, and his institutional record which included 11 infractions, the Supreme Court properly determined that, in any event, substantial justice dictated that the defendant's motion should be denied (*see People v Karim*, 85 AD3d 943, 944; *People v Dennis*, 84 AD3d 834, 835; *People v Colon*, 77 AD3d

849, 850; *People v Winfield*, 59 AD3d 747, 747-748; *People v Flores*, 50 AD3d 1156, 1157).

RIVERA, J.P., DICKERSON, LEVENTHAL and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court