

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

D36207
C/kmb

_____AD3d_____

Submitted - September 18, 2012

REINALDO E. RIVERA, J.P.
CHERYL E. CHAMBERS
L. PRISCILLA HALL
SHERI S. ROMAN, JJ.

2010-12003

DECISION & ORDER

The People, etc., respondent,
v Timothy Ashby, appellant.

(Ind. No. 4672/99)

Lynn W. L. Fahey, New York, N.Y. (David P. Greenberg of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Caroline R. Donhauser, and Terrence F. Heller of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Guzman, J.), dated December 9, 2010, which 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 September 24, 2003.

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

The defendant contends, and the People correctly concede, that contrary to the Supreme Court's determination, 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 Ashton*, 95 AD3d 1137; *People v Cobb*, 90 AD3d 779; *People v Rodriguez*, 89 AD3d 1042; *People v Martin*, 89 AD3d 1039). Accordingly, the order appealed from must be reversed, and the matter remitted to the Supreme Court, Kings County, for further proceedings pursuant to CPL 440.46.

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RIVERA, J.P., CHAMBERS, HALL and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court