

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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KA 10-02511

PRESENT: SCUDDER, P.J., FAHEY, CARNI, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JULIAN JENKINS, DEFENDANT-APPELLANT.

LINDA GEHRON, SYRACUSE, FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (VICTORIA M. WHITE OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Supreme Court, Onondaga County (John J. Brunetti, A.J.), entered August 17, 2010 pursuant to the 2009 Drug Law Reform Act. The order denied defendant's application to be resentenced upon defendant's 2005 conviction of criminal possession of a controlled substance in the third degree.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law and the matter is remitted to Supreme Court, Onondaga County, for further proceedings in accordance with the following Memorandum: Defendant appeals from an order denying his application for resentencing under the 2009 Drug Law Reform Act (CPL 440.46). We agree with defendant that Supreme Court erred in determining that he was ineligible for resentencing because he had previously been released on parole and at the time of his application was reincarcerated for violating his parole (*see People v Paulin*, ___ NY3d ___ [June 28, 2011]). Further, because defendant was incarcerated at the time of his application, the fact that he was subsequently re-released on parole does not render his application moot (*see People v Santiago*, ___ NY3d ___ [June 28, 2011]). We therefore reverse the order and remit the matter to Supreme Court for further proceedings on defendant's application for resentencing pursuant to CPL 440.46.

Entered: August 19, 2011

Patricia L. Morgan
Clerk of the Court