

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

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KA 10-00398

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, AND VALENTINO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ROBERT SAFFOLD, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (KRISTEN MCDERMOTT OF COUNSEL), FOR DEFENDANT-APPELLANT.

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

Appeal from an order of the Onondaga County Court (William D. Walsh, J.), entered January 25, 2010 pursuant to the 2009 Drug Law Reform Act. The order denied the application of defendant to be resentenced upon defendant's 2003 conviction of criminal possession of a controlled substance in the third degree and criminal possession of a controlled substance in the fifth degree.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law and the matter is remitted to Onondaga County Court for further proceedings in accordance with the following Memorandum: Defendant appeals from an order denying his application for resentencing pursuant to the 2009 Drug Law Reform Act (see CPL 440.46). As the People correctly concede, County Court erred in denying the application on the ground that defendant was a reincarcerated parole violator (see *People v Paulin*, 17 NY3d 238, 241-242; *People v Wallace*, 87 AD3d 824, 824). In addition, it is of no moment that defendant was released to parole supervision subsequent to his application inasmuch as "a prisoner who applied before being paroled is not barred from obtaining resentencing after [his or] her release" (*People v Santiago*, 17 NY3d 246, 247). We therefore reverse the order and remit the matter to County Court for further proceedings on defendant's application for resentencing pursuant to CPL 440.46.

Entered: June 7, 2013

Frances E. Cafarell
Clerk of the Court