

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: July 5, 2012

103583

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

LASHAWN D. GRAHAM,

Appellant.

Calendar Date: May 9, 2012

Before: Peters, P.J., Mercure, Malone Jr., Kavanagh and
Stein, JJ.

Michael P. Graven, Owego, for appellant.

Weeden A. Wetmore, District Attorney, Elmira, for
respondent.

Appeal from an order of the County Court of Chemung County
(Hayden, J.), entered June 8, 2010, which denied defendant's
motion for resentencing pursuant to CPL 440.46.

In 2000, defendant was convicted of criminal sale of a
controlled substance in the third degree and was sentenced to 6
to 12 years in prison. In 2009, he moved for resentencing
pursuant to CPL 440.46 and waived his right to a hearing. County
Court denied the motion and this appeal ensued.

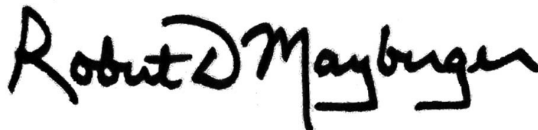
We affirm. The record discloses that defendant has a
lengthy criminal history, consisting of many drug-related
convictions, as well as prior parole violations and prison
disciplinary infractions. Under these circumstances, and
notwithstanding defendant's programming achievements while

incarcerated, we conclude that County Court properly exercised its discretion in finding that substantial justice would not be served by resentencing defendant (see CPL 440.46 [3]; see e.g. People v Gonzalez, 92 AD3d 798, 799 [2012]; People v Rivera, 92 AD3d 523, 524 [2012]; People v Carpenter, 86 AD3d 721, 721 [2011]).

Peters, P.J., Mercure, Malone Jr., Kavanagh and Stein, JJ., concur.

ORDERED that the order is affirmed.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court