

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

Decided and Entered: May 10, 2012

103847

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

MOSES LANDY,

Appellant.

Calendar Date: April 18, 2012

Before: Peters, P.J., Mercure, Rose, Lahtinen and
Egan Jr., JJ.

Brian M. Callahan, Schenectady, for appellant.

Robert M. Carney, District Attorney, Schenectady (Gerald A.
Dwyer of counsel), for respondent.

Rose, J.

Appeal from an order of the County Court of Schenectady
County (Drago, J.), entered October 13, 2010, which denied
defendant's motion for resentencing pursuant to CPL 440.46.

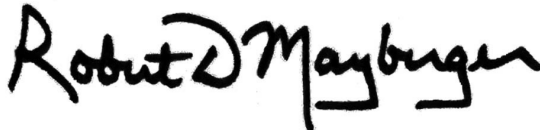
In 1997, defendant was convicted upon his plea of guilty of
the crime of criminal sale of a controlled substance in the third
degree (two counts) and was thereafter sentenced to an aggregate
prison term of 8 to 16 years. In 2009, while on parole,
defendant violated the terms of his parole and was
reincarcerated. Defendant thereafter moved for resentencing
pursuant to CPL 440.46. County Court denied the motion on the
basis that defendant was ineligible to apply for resentencing
because he had violated parole. Defendant now appeals.

We reverse. Defendant's status as a reincarcerated parole violator does not render him ineligible for resentencing as a matter of law (see People v Paulin, 17 NY3d 238, 244 [2011]), although it may be taken into consideration in determining whether or not to grant his application (see People v Chaires, 89 AD3d 1282, 1282 [2011]; People v Chatham, 88 AD3d 1063, 1064 [2011]). Accordingly, the order must be reversed and the matter remitted to County Court for further proceedings.

Peters, P.J., Mercure, Lahtinen and Egan Jr., JJ., concur.

ORDERED that the order is reversed, on the law, and matter remitted to the County Court of Schenectady County for further proceedings not inconsistent with this Court's decision.

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