

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

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KA 10-01826

PRESENT: SMITH, J.P., CENTRA, FAHEY, GORSKI, AND MARTOCHE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL J. GATEWOOD, DEFENDANT-APPELLANT.

ADAM H. VAN BUSKIRK, AURORA, FOR DEFENDANT-APPELLANT.

JON E. BUDELMANN, DISTRICT ATTORNEY, AUBURN (ROMOLO CANZANO OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Cayuga County Court (Thomas G. Leone, J.), entered May 6, 2010 pursuant to the 2009 Drug Law Reform Act. The order denied defendant's application to be resentenced upon defendant's 1998 conviction of criminal sale of a controlled substance in the third degree.

It is hereby ORDERED that the order so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from an order denying his application for resentencing pursuant to CPL 440.46, the 2009 Drug Law Reform Act (DLRA-3). Although defendant is eligible to apply for resentencing under DLRA-3 despite the fact that he had been released from incarceration and was thereafter reincarcerated for violating the conditions of his parole (*see People v Paulin*, ___ NY3d ___ [June 28, 2011]; *People v Wallace*, ___ AD3d ___ [Aug. 19, 2011]), we nevertheless conclude that County Court did not abuse its discretion in determining that substantial justice required denial of his application (*see People v Pipkin*, 77 AD3d 770, lv denied 15 NY3d 955). We reject defendant's further contention that the court erred in receiving the limited testimony of the District Attorney regarding his personal knowledge of defendant's criminal history (*see generally* CPL 440.46 [3]; L 2004, ch 738, § 23).

Entered: August 19, 2011

Patricia L. Morgan
Clerk of the Court