

SUPREME COURT - STATE OF NEW YORK
CRIMINAL TERM PART K-12 QUEENS COUNTY
125-01 QUEENS BOULEVARD
KEW GARDENS, NY 11415

P R E S E N T :

HONORABLE JOSEPH ANTHONY GROSSO
ACTING JUSTICE

THE PEOPLE OF THE STATE OF NEW YORK Ind. No. QN10727/04

- against -

Motion to be Resentenced

SHAMAR WIGGINS,

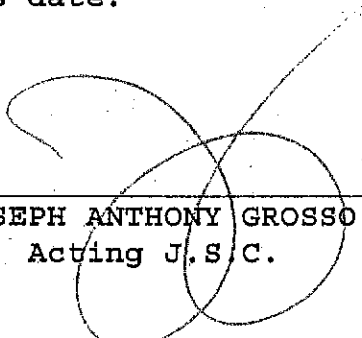
Defendant.

Kathleen Whooley, Esq.
For the Motion

Hon. Richard A. Brown
District Attorney, Queens
County, by:

Marilyn A. Filingeri, Esq
Opposed

Upon the foregoing papers defendant's motion to be resentenced pursuant to the Drug Law Reform legislation, Chapter 56 of the Laws of New York is denied for the reasons indicated in the accompanying memorandum of this date.



JOSEPH ANTHONY GROSSO
Acting J.S.C.

Date: March 30, 2010

MEMORANDUM

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM : PART K-12

THE PEOPLE OF THE STATE OF NEW YORK

BY: GROSSO, J.

-against-

DATE: March 30, 2010

Ind. No. QN10727/04

SHAMAR WIGGINS,

Defendant.

The defendant was arrested when a search warrant was executed at his apartment on April 16, 2004. The search yielded 10 bags of cocaine, 14 ecstasy pills and \$100. Subsequently, the defendant entered into a cooperation with the District Attorney's office and the New City Police Department. For his cooperation the defendant was permitted to plead guilty to Criminal Possession of a Controlled Substance in the Third Degree and Criminal Possession in the Seventh Degree. If the defendant fulfilled his obligation of the agreement, the felony count would be dismissed and he would be sentenced to three years probation on the remaining count. If the defendant violated the agreement he was to receive ten to twenty years.

On May 3, 2006, because of his failure to abide by the

cooperation agreement, I sentenced the defendant to six to twelve years of incarceration. The People recommended the sentence of six to twelve years based on the fact that the defendant did substantially perform under the agreement.

The defendant received work release in January 2009. On August 15, 2009, the defendant was arrested for Criminal Trespass in the Third Degree. He was sentenced on August 16, 2009, to time served.

Defendant was granted his release to Parole Supervision on January 19, 2010, and is no longer in custody. The controlling law is CPL 440.46. The first line in this section states, "Any person in the custody of the department of correctional services...". While the defense concedes the defendant is no longer "in custody" they contend that "does not render him ineligible because he was in custody at the time his motion was served and filed." I disagree. I find that to be eligible for resentencing the defendant must be in custody as the statute clearly states. Accordingly, I find this defendant is not eligible for resentencing.

Order entered accordingly.



JOSEPH ANTHONY GROSSO
Acting J.S.C.