



**BROOME COUNTY COURT**

COUNTY COURT CHAMBERS  
65 HAWLEY STREET  
BINGHAMTON, NEW YORK 13901

(607) 778-2431

JOSEPH F. CAWLEY, JR.  
JUDGE

March 16, 2010

Karen Stephens, Deputy Chief Clerk  
Broome Supreme & County Court Clerk's Office  
Broome County Courthouse  
Binghamton, NY 13901

Re: People v. Kareem R. Young - Ind. 2003-0549

Dear Karen

Enclosed for filing please find a Decision and Order denying defendant's application for re-sentencing under CPL §440.46.

Very truly yours,

HON. JOSEPH F. CAWLEY  
Broome County Court Judge

snm

cc w/enc. Joann R. Parry, Chief Assistant District Attorney  
Jay L. Wilber, Broome County Public Defender

STATE OF NEW YORK  
COUNTY COURT : : BROOME COUNTY

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THE PEOPLE OF THE STATE OF NEW YORK

vs-

**DECISION AND ORDER**  
Indictment No. 2003-0549

KAREEM R. YOUNG,

Defendant.  
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**JOSEPH F. CAWLEY, J.**

On or about December 28, 2009, defendant moved *pro se* for re-sentencing pursuant to CPL §440.46. The Court thereafter assigned the Broome County Public Defender to represent defendant in this matter. A Notice of Motion was filed by Public Defender Jay Wilber, Esq. on or about February 2, 2010. The People have responded in opposition.

The Court has reviewed the submissions of the parties, the Court's file, and the relevant statute.

Defendant's criminal history includes a prior conviction for Burglary in the Second Degree, for which a sentence of five to ten years had been imposed on April 17, 1998. He was released to Parole supervision on that conviction on May 20, 2003. On September , 2004, defendant was convicted of Criminal Possession of a Controlled Substance in the Third Degree, a Class B felony, and Criminal Sale of a Controlled Substance in the Third Degree, a Class B felony. He was sentenced as a Second Felony Offender to concurrent terms of six to twelve years for crimes committed on or about August 29, 2003

Criminal Procedure Law §440.46(1), effective October 7, 2009, provides in pertinent part

that any person in the custody of the Department of Correctional Services, convicted of a Class B drug felony offense committed prior to January 13, 2005 and who is serving an indeterminate sentence with a maximum term of more than three years, may, except as provided in Subdivision Five, apply to be re-sentenced to a determinate sentence upon notice to the District Attorney, in the court which imposed the sentence.

Subdivision 5 of CPL §440.46 provides that the foregoing provisions shall not apply to any person who is serving a sentence on a conviction for, or has a predicate felony conviction for an exclusion offense. For purposes of this subdivision, an "exclusion offense" is: (a) a crime for which the person was previously convicted within the preceding ten years, excluding any time during which the offender was incarcerated for any reason between the time of commission of the previous felony and the time of commission of the present felony, which was (i) a violent felony offense as defined in Penal Law §70.02. Penal law §70.02 includes Burglary in the Second Degree as a Class C violent felony offense.

Defendant was convicted of Burglary in the Second Degree on April 7, 1998. Although this prior violent felony offense did not occur within the preceding ten years by calendar (April 17, 1998 being approximately eleven years and eight months from December 28, 2009, the date of defendant's application for re-sentencing), CPL §440.46 requires exclusion of any time periods during which defendant was incarcerated between the commission of the previous felony and the commission of the present felony. The Court records indicate that defendant was charged under Indictment No. 96-0452 with crimes committed on February 14, 1996 and February 21, 1996. He was convicted of Burglary in the Second Degree and was sentenced on April 7, 1998 to a term of five to ten years. He was released to Parole on May 20, 2003. He was, therefore,

incarcerated for a period of time of approximately five years and one month. The present crime was committed on or about August 29, 2003. Excluding the aforesaid period of defendant's incarceration from the eleven year and eight month time period between the prior violent felony conviction and his present re-sentencing application, leaves a time period of approximately six years and seven months. Therefore, defendant's prior violent felony conviction falls within the preceding ten years, making him ineligible for re-sentencing.

Inasmuch as defendant is not eligible for re-sentencing under CPL 440.46(5)(a)(i), his motion is denied.

This constitutes the Decision and Order of the Court.

Defendant is advised of his right to appeal from this Court's determination to the Appellate Division, Third Department (Laws of 2004, Ch. 738, §23). The appeal must be filed within thirty (30) days of service of this Decision and Order. Upon proof of financial inability to retain counsel to pay the costs and expenses of the appeal, defendant may apply to the Appellate Division for the assignment of counsel and for leave to prosecute the appeal as a poor person. (22 NYCRR 82.3)

It is so Ordered.

DATED: March 16, 2010  
Binghamton, New York

  
HON. JOSEPH F. CAWLEY  
Broome County Court Judge

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<sup>1</sup> The Court notes that defendant was likely in custody for more than the time period indicated, however, those records are not readily available and are unnecessary for the purposes of this determination.

**APPEARANCES**

**GERALD F. MOLLEN, Broome County District Attorney**  
By: Joann Rose Parry, Chief Assistant District Attorney  
George Harvey Justice Building  
45 Hawley Street  
Binghamton, NY 13901

**JAY L. WILBER, Broome County Public Defender**  
George Harvey Justice Building  
45 Hawley Street  
Binghamton, NY 13901