

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D19128
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_____AD3d_____

Submitted - March 13, 2008

ROBERT A. LIFSON, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
CHERYL E. CHAMBERS, JJ.

2005-03411

DECISION & ORDER

The People, etc., respondent,
v Patricia Aguirre, a/k/a Tania Cabrera, appellant.

(S.C.I. No. 1290/04)

Lynn W. L. Fahey, New York, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Solomon Neubort, and Marie-Claude P. Wrenn of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Feldman, J.), rendered April 8, 2004, convicting her of manslaughter in the first degree, upon her plea of guilty, and imposing sentence.

ORDERED that the judgment is modified, on the law, by vacating the sentence imposed; as so modified, the judgment is affirmed, and the matter is remitted to the Supreme Court, Kings County, for resentencing that properly includes a period of postrelease supervision as part of the sentence.

The defendant was sentenced, as promised, to a determinate term of 10 years imprisonment. The sentencing minutes indicate that the Supreme Court also stated that the defendant would be subject to a period of postrelease supervision by the Parole Board, but did not pronounce the period thereof. However, a notation on the order of sentence and commitment signed by the Clerk of that court indicated that the defendant's period of postrelease supervision was to be five years.

October 21, 2008

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Since the defendant does not wish to take back her plea of guilty, and the term of the period of postrelease supervision was not pronounced by the sentencing court, this Court must vacate the sentence and remit the matter to the Supreme Court, Kings County, for resentencing that properly includes a period of postrelease supervision as part of the sentence (*see People v Sparber*, 10 NY3d 457, 469; *see also People v Selikoff*, 35 NY2d 227, *cert denied* 419 US 1122; *cf. People v Hill*, 9 NY3d 189; *People v Van Deusen*, 7 NY3d 744).

LIFSON, J.P., FLORIO, ANGIOLILLO and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court