

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

D20726  
X/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - September 23, 2008

ROBERT A. LIFSON, J.P.  
DAVID S. RITTER  
HOWARD MILLER  
RUTH C. BALKIN, JJ.

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2006-06489

DECISION & ORDER

The People, etc., respondent,  
v Mario Martinez, appellant.

(Ind. No. 358/98)

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Lynn W. L. Fahey, New York, N.Y. (Michelle Mogal of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Jodi L. Mandel of counsel; John Paul DeVerna on the brief), for respondent.

Appeal by the defendant from a resentencing of the Supreme Court, Kings County (Marrus, J.), dated June 22, 2006, pursuant to the Drug Law Reform Act of 2004 (L 2004, ch 738, § 23), imposed after a hearing, the resentencing being concurrent determinate prison terms of 20 years and a period of postrelease supervision of 5 years, upon his conviction of criminal sale of a controlled substance in the first degree (two counts), upon a jury verdict.

ORDERED that the resentencing is affirmed.

The defendant's contention that the resentencing imposed improperly penalized him for exercising his right to a trial is unreserved for appellate review, since he did not set forth the issue on the record at the time of resentencing (*see People v Hargroves*, 27 AD3d 765, 765-766). In any event, the contention is without merit (*id.*; *see People v Durkin*, 132 AD2d 668; *see also People v Martinez*, 289 AD2d 259, 259-260; *People v Bellilli*, 270 AD2d 355). The resentencing imposed was not otherwise excessive (*see People v Suitte*, 90 AD2d 80).

LIFSON, J.P., RITTER, MILLER and BALKIN, JJ., concur.

ENTER:

  
James Edward Pelzer

October 14, 2008

PEOPLE v MARTINEZ, MARIO

Clerk of the Court

October 14, 2008

PEOPLE v MARTINEZ, MARIO