

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

D22639
G/prt

_____AD3d_____

Argued - November 10, 2008

HOWARD MILLER, J.P.
THOMAS A. DICKERSON
JOHN M. LEVENTHAL
ARIEL E. BELEN, JJ.

2005-11181

DECISION & ORDER

The People, etc., respondent,
v James Bens, appellant.

(Ind. No. 10025/00)

Steven Banks, New York, N.Y. (Arthur H. Hopkirk of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Ellen C. Abbot, and Suzanne H. Sullivan of counsel), for respondent.

Appeal by the defendant from a resentence of the Supreme Court, Queens County (Cooperman, J.), dated September 22, 2005, pursuant to the Drug Law Reform Act of 2004 (L 2004, ch 738, § 23), imposed after a hearing, the resentence being a determinate term of imprisonment of 13 years, upon his conviction of attempted criminal possession of a controlled substance in the first degree under Queens County Indictment No. 10025/00, upon a jury verdict, to run consecutively with the sentence imposed upon his conviction of criminal sale of controlled substance in the third degree under Queens County Indictment No. 10748/99, upon a jury verdict, and a period of postrelease supervision of 5 years.

ORDERED that the resentence is affirmed.

In connection with his application to be resentenced under the Drug Law Reform Act of 2004 (L 2004, ch 738, § 23), the defendant received the effective assistance of counsel, under both state and federal constitutional standards (*see People v Vaughan*, _____AD3d_____, 2009 NY Slip Op 02394 [2d Dept 2009]; *People v Arevalo*, 54 AD3d 380; *see also Strickland v Washington*, 466 US 668; *People v Benevento*, 91 NY2d 708, 713-714; *People v Baldi*, 54 NY2d 137, 147).

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The resentence imposed was not excessive (*see People v Martinez*, 55 AD3d 753; *People v Suitte*, 90 AD2d 80).

MILLER, J.P., DICKERSON, LEVENTHAL and BELEN, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court