

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

D24076
O/prt

_____AD3d_____

Submitted - December 12, 2008

ANITA R. FLORIO, J.P.
JOSEPH COVELLO
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2007-10541

DECISION & ORDER

The People, etc., respondent,
v Jermaine Smith, appellant.

(Ind. No. 9851/01)

Lynn W. L. Fahey, New York, N.Y. (Steven R. Bernhard of counsel), for appellant.

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

Appeal by the defendant from a resentence of the Supreme Court, Kings County (Dowling, J.), imposed October 3, 2007, upon his conviction of criminal possession of a weapon in the second degree, upon a jury verdict.

ORDERED that the resentence is affirmed.

The defendant's contention that the resentencing court improperly failed to sentence him de novo is unpreserved for appellate review (*see* CPL 470.05 [2]; *People v Nieves*, 2 NY3d 310, 315-316; *People v Killiebrew*, _____AD3d_____, 2009 NY Slip Op 05361 [2d Dept 2009]; *People v Marshall*, 228 AD2d 15, 17-18; *cf. People v D'Avila*, 21 AD3d 905; *People v McHale*, 165 AD2d 800) and, in any event, is without merit (*see People v Stewartson*, _____AD3d_____, 2009 NY Slip Op 05157 [2d Dept 2009]).

FLORIO, J.P., COVELLO, BALKIN and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

July 28, 2009

PEOPLE v SMITH, JERMAINE