

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

D25989
G/prt

_____AD3d_____

Argued - January 5, 2010

MARK C. DILLON, J.P.
JOSEPH COVELLO
HOWARD MILLER
CHERYL E. CHAMBERS, JJ.

2008-09709

DECISION & ORDER

The People, etc., respondent,
v Dieuvais Surin, appellant.

(Ind. No. 1010/07)

Blanch Law Firm, P.C., New York, N.Y. (Edward McQuat and Clara Schauman of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Diane R. Eisner of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Del Giudice, J.), rendered September 29, 2008, convicting him of criminal sexual act in the second degree (13 counts) and sexual abuse in the second degree (9 counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed, and the matter is remitted to the Supreme Court, Kings County, for further proceedings pursuant to CPL 460.50(5).

In fulfilling our responsibility to conduct an independent review of the evidence (*see* CPL 470.15[5]; *People v Danielson*, 9 NY3d 342), we nevertheless accord great deference to the jury's opportunity to view the witnesses, hear the testimony, and observe demeanor (*see People v Mateo*, 2 NY3d 383, 410, *cert denied* 542 US 946; *People v Bleakley*, 69 NY2d 490, 495). Upon reviewing the record here, we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

To the extent the defendant's claims of ineffective assistance of counsel are based

upon matter de hors the record, they may not be reviewed on direct appeal (*see People v Bigelow*, 68 AD3d 1127; *People v Ballinger*, 62 AD3d 895; *People v Zimmerman*, 309 AD2d 824, 824-825; *People v Rosas*, 306 AD2d 91, 92). Insofar as we are able to review those claims, defense counsel provided the defendant with meaningful representation (*see People v Benevento*, 91 NY2d 708, 712; *People v Rivera*, 71 NY2d 705, 709).

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

The defendant's remaining contentions are unpreserved for appellate review and, in any event, are without merit.

DILLON, J.P., COVELLO, MILLER and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court