

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

D27218
W/prt

_____AD3d_____

Submitted - April 5, 2010

PETER B. SKELOS, J.P.
RUTH C. BALKIN
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2009-02755

DECISION & ORDER

The People, etc., respondent,
v Joseph Hirsch, appellant.

(Ind. No. 743/99)

Robert C. Mitchell, Riverhead, N.Y. (Alfred J. Cicale of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Edward A. Bannan of counsel),
for respondent.

Appeal by the defendant from a resentencing of the County Court, Suffolk County (Hinrichs, J.), imposed February 27, 2009, which, upon his conviction of sexual abuse in the first degree (two counts), assault in the second degree (two counts), and unlawful imprisonment in the first degree, upon a jury verdict, imposed a term of postrelease supervision of three years in addition to the determinate sentence of imprisonment of six years previously imposed on January 3, 2002.

ORDERED that the resentencing is reversed, on the law, the term of postrelease supervision is vacated, and the original sentence imposed on January 3, 2002, is reinstated.

The Court of Appeals recently held, in *People v Williams* (14 NY3d 198, 221-222), that “once a defendant is released from custody and returns to the community after serving the period of incarceration that was ordered by the sentencing court, and the time to appeal the sentence has expired or the appeal has been finally determined, there is a legitimate expectation that the sentence, although illegal under the Penal Law, is final and the Double Jeopardy Clause prevents a court from modifying the sentence to include a period of postrelease supervision.” Since the defendant’s direct appeal was determined in November 2002 and he was released from custody in December 2007, the Double Jeopardy Clauses of the United States and New York Constitutions (US Const Amend V,

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cl 2; NY Const, art I, § 6) prohibited the Supreme Court from thereafter modifying his sentence to impose a term of postrelease supervision. Accordingly, the term of postrelease supervision must be vacated, and the defendant's original sentence reinstated.

SKELOS, J.P., BALKIN, ROMAN and SGROI, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court