

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

D27927
C/prt

_____AD3d_____

Submitted - March 26, 2010

A. GAIL PRUDENTI, P.J.
REINALDO E. RIVERA
FRED T. SANTUCCI
THOMAS A. DICKERSON
L. PRISCILLA HALL, JJ.

2008-09917

DECISION & ORDER

The People, etc., respondent,
v Dwayne Tillman, appellant.

(Ind. No. 98-01448)

Judith E. Permutt, Brooklyn, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (William C. Milaccio, Richard Longworth Hecht, and Anthony J. Servino of counsel), for respondent.

Appeal by the defendant, as limited by his motion, from a resentencing of the County Court, Westchester County (Zambelli, J.), imposed September 23, 2008.

ORDERED that the resentencing is affirmed.

Under the circumstances of this case, the defendant's contentions that the resentencing, pursuant to which the County Court, in effect, added the statutorily required period of postrelease supervision to his sentence (*see* Penal Law § 70.45), violated the prohibition against double jeopardy and his due process rights because he had a legitimate expectation in the finality of his sentence, are without merit (*see People v Prendergast*, 71 AD3d 1055; *cf. People v Williams*, 14 NY2d 198).

Insofar as the defendant's allegations of ineffective assistance of counsel are based upon matter which is dehors the record, they are not reviewable on this appeal (*see e.g. People v Oquendo*, 71 AD3d 1052, 1052). To the extent that the record permits review of the defendant's claim that he was deprived of the effective assistance of counsel, the defendant received meaningful representation (*see Strickland v Washington*, 466 US 668; *People v Henry*, 95 NY2d 563, 564;

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People v Baldi, 54 NY2d 137, 147).

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

PRUDENTI, P.J., RIVERA, SANTUCCI, DICKERSON and HALL, 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