

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

D28401  
G/kmg

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Submitted - September 8, 2010

WILLIAM F. MASTRO, J.P.  
ANITA R. FLORIO  
THOMAS A. DICKERSON  
ARIEL E. BELEN  
PLUMMER E. LOTT, JJ.

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2008-07033

DECISION & ORDER

The People, etc., respondent,  
v Demetrious Loving, appellant.

(Ind. No. 2557/00)

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Steven Banks, New York, N.Y. (Jonathan Garelick of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano and Merri Turk Lasky of counsel; Mark Gaylord on the brief), for respondent.

Appeal by the defendant from a resentencing of the Supreme Court, Queens County (Kron, J.), imposed June 26, 2008, which, upon his conviction of assault in the second degree, criminal possession of a weapon in the third degree, and criminal possession of a weapon in the fourth degree (two counts), after a nonjury trial, imposed a period of postrelease supervision of five years in addition to the determinate term of imprisonment previously imposed on June 13, 2001, for his conviction of assault in the second degree.

ORDERED that the resentencing is reversed, on the law, the period of postrelease supervision is vacated, and the original sentence imposed on June 13, 2001, is reinstated.

“[O]nce 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” (*People v Williams*, 14 NY3d 198, 219-220). As the People correctly concede, the imposition of a period

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of postrelease supervision upon this defendant violated his rights under the Double Jeopardy Clause of the United States Constitution (*see* US Const, 5th Amend; *People v Williams*, 14 NY3d 198, 219-220). Accordingly, the resentence must be reversed, the period of postrelease supervision vacated, and the original sentence reinstated.

MASTRO, J.P., FLORIO, DICKERSON, BELEN and LOTT, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court