

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

D28810
G/kmg

_____AD3d_____

Submitted - October 15, 2010

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
JOHN M. LEVENTHAL
ARIEL E. BELEN, JJ.

2009-07631

DECISION & ORDER

The People, etc., respondent,
v Ronald Misla, appellant.

(Ind. No. 209/01)

Lynn W. L. Fahey, New York, N.Y. (Paul Skip Laisure of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano and Daniel Bresnahan of counsel; Robert S. Martinez on the brief), for respondent.

Appeal by the defendant from a resentence of the Supreme Court, Queens County (Lewis, J.), imposed July 17, 2009, which, upon his convictions of robbery in the first degree and criminal possession of stolen property in the fifth degree, upon a jury verdict, imposed a period of postrelease supervision of five years in addition to the determinate term of imprisonment previously imposed on April 25, 2002.

ORDERED that the resentence is affirmed.

The defendant was convicted, after a jury trial, of robbery in the first degree and criminal possession of stolen property in the fifth degree. On April 25, 2002, he was sentenced to a 10-year determinate sentence on the robbery conviction and a 1-year definite sentence on the stolen property conviction, but the Supreme Court did not impose the mandatory five-year period of postrelease supervision on the robbery conviction. On July 17, 2009, while the defendant was still incarcerated and serving the original sentence, he was brought before the Supreme Court for resentencing so the mandatory period of postrelease supervision could be imposed (*see* Penal Law § 70.45).

November 3, 2010

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Since the defendant had not yet been released from incarceration on his original sentence when he was resentenced, the resentencing to a term including the statutorily required period of postrelease supervision did not subject him to double jeopardy or violate his right to due process of law (see *People v Pruitt*, 74 AD3d 1366, *lv denied* 15 NY3d 855; *People v Tillman*, 74 AD3d 1251, *lv denied* 15 NY3d 856; *People v Mendez*, 73 AD3d 951, *lv denied* 15 NY3d 854; *People v Murrell*, 73 AD3d 598, *lv granted* 15 NY3d 854; *People v Parisi*, 72 AD3d 989, *lv granted* 15 NY3d 776; *People v Becker*, 72 AD3d 1290; *People v Scalercio*, 71 AD3d 1060; *People v Prendergast*, 71 AD3d 1055, *lv granted* 15 NY3d 808; *cf. People v Jordan*, 15 NY3d 727, 728; *People v Williams*, 14 NY3d 198, *cert denied* _____ US _____, 2010 WL 2070229).

MASTRO, J.P., FISHER, LEVENTHAL and BELEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court