

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

D29329
C/kmb

_____AD3d_____

Submitted - November 23, 2010

JOSEPH COVELLO, J.P.
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
ARIEL E. BELEN, JJ.

2007-04396

DECISION & ORDER

The People, etc., respondent,
v Calvin Marshall, appellant.

(Ind. No. 6154/99)

Steven Banks, New York, N.Y. (Laura Boyd of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Joyce Slevin,
and Maria Park of counsel), for respondent.

Appeal by the defendant from a resentencing of the Supreme Court, Kings County (Walsh, J.), imposed March 26, 2007, upon his conviction of attempted murder in the second degree, upon a jury verdict.

ORDERED that the resentencing is reversed, on the law and as a matter of discretion in the interest of justice, and the matter is remitted to the Supreme Court, Kings County, for resentencing in accordance herewith.

Penal Law § 70.25(4) provides, in relevant part, that “[w]hen a person, who is subject to any undischarged term of imprisonment imposed at a previous time by a court of another jurisdiction, is sentenced to an additional term or terms of imprisonment by a court of this state, the sentence or sentences imposed by the court of this state . . . shall run either concurrently or consecutively with respect to such undischarged term in such manner as the court directs at the time of sentence.” Here, as the People correctly concede, the sentencing court’s misapprehension, upon resentencing, regarding its discretion to impose a sentence of imprisonment to run either concurrently or consecutively with a sentence previously imposed by a Federal court requires that the defendant

December 7, 2010

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be resentenced (*see People v Yant*, 223 AD2d 747; *People v Vega*, 181 AD2d 635; *People v Jeffries*, 166 AD2d 665, 666).

COVELLO, J.P., ANGIOLILLO, DICKERSON and BELEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court