

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

D30024  
H/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - January 25, 2011

MARK C. DILLON, J.P.  
JOSEPH COVELLO  
ANITA R. FLORIO  
L. PRISCILLA HALL, JJ.

2008-11226

DECISION & ORDER

The People, etc., respondent,  
v Otis Bryant, appellant.

(Ind. No. 3235/06)

Lynn W. L. Fahey, New York, N.Y. (A. Alexander Donn of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,  
Johnnette Traill, and Danielle Hartman of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Kron, J.), rendered November 10, 2008, convicting him of robbery in the second degree (two counts), criminal possession of stolen property in the fourth degree, and criminal possession of stolen property in the fifth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the Supreme Court's procedure for handling two jury notes violated the procedure enunciated by the Court of Appeals in *People v O'Rama* (78 NY2d 270, 277-278) is unpreserved for appellate review (see *People v Ramirez*, 15 NY3d 824; *People v Mateo*, 53 AD3d 1111, 1112; *People v Battle*, 15 AD3d 413, 414; *People v Mitchell*, 2 AD3d 145, 148; *People v Neal*, 268 AD2d 307; *People v Burgos*, 248 AD2d 547), and we decline to reach it in the exercise of our interest of justice jurisdiction. Since the jury merely requested readbacks of certain testimony and of the definitions of certain crimes, and to be provided with certain evidence, the alleged error did not constitute a mode of proceedings error which would obviate the preservation requirement (see *People v Starling*, 85 NY2d 509; cf. *People v Cook*, 85 NY2d 928).

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Additionally, contrary to the defendant's contention, the fact that his codefendant received a lesser sentence following a plea of guilty does not render the defendant's sentence excessive under the circumstances of this case (*see People v Murad*, 55 AD3d 754, 756; *People v Jones*, 4 AD3d 796, 797; *cf. People v Versaggi*, 296 AD2d 429, 430).

DILLON, J.P., COVELLO, FLORIO and HALL, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court