

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

D30163
G/kmb

_____AD3d_____

Submitted - February 4, 2011

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
RANDALL T. ENG
SANDRA L. SGROI, JJ.

2009-09465

DECISION & ORDER

The People, etc., respondent,
v Gary Cheatham, appellant.

(Ind. No. 1585/01)

Steven Banks, New York, N.Y. (Steven J. Miraglia of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Morgan J. Dennehy of counsel; Tamara De Moor on the brief), for respondent.

Appeal by the defendant from a resentence of the Supreme Court, Kings County (Brennan, J.), imposed September 25, 2009, which, upon his conviction of robbery in the first degree, upon a plea of guilty, imposed a period of postrelease supervision in addition to the determinate term of imprisonment previously imposed on April 10, 2002.

ORDERED that the resentence is affirmed.

In 2002, upon the defendant's conviction of robbery in the first degree, the Supreme Court imposed a determinate prison term of 10 years. At that time, however, the Supreme Court failed to impose the statutorily required period of postrelease supervision (*see* Penal Law § 70.45[1], [2]). Thereafter, on September 25, 2009, pursuant to the provisions of Correction Law § 601-d, the defendant appeared before the Supreme Court for resentencing, at which time the Supreme Court re-imposed the original 10-year determinate term and added a 5-year period of postrelease supervision.

The defendant had not yet been released from incarceration on the original sentence at the time of his resentencing. Accordingly, the resentencing to a term including the statutorily required period of postrelease supervision did not subject him to double jeopardy or violate his right

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to due process (*see People v Ware*, 78 AD3d 743, 744; *People v Pruitt*, 74 AD3d 1366; *People v Tillman*, 74 AD3d 1251; *People v Mendez*, 73 AD3d 951; *People v Murell*, 73 AD3d 598, 599, *lv granted* 15 NY3d 854; *People v Parisi*, 72 AD3d 989, *lv granted* 15 NY3d 776; *cf. People v Williams*, 14 NY3d 198, *cert denied* _____ US _____, 131 S Ct 125).

MASTRO, J.P., SKELOS, ENG and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court