

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

D30220
Y/kmb

_____AD3d_____

Submitted - November 1, 2010

ANITA R. FLORIO, J.P.
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS
L. PRISCILLA HALL, JJ.

2009-06006

DECISION & ORDER

The People, etc., respondent,
v Carlos Rodriguez, appellant.

(Ind. No. 471/08)

Lynn W. L. Fahey, New York, N.Y., for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (Gary S. Fidel of counsel;
William Moccia on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Kron, J.), rendered January 14, 2009, convicting him of attempted burglary in the second degree, upon his plea of guilty, and imposing sentence. Justice Chambers has been substituted for the late Justice Fisher (*see* 22 NYCRR 270.1[c]).

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, he knowingly, voluntarily, and intelligently waived his right to appeal (*see People v Ramos*, 7 NY3d 737, 738; *People v Lopez*, 6 NY3d 248, 257). As a result, the defendant's challenge to the persistent violent felony offender statute (*see* Penal Law §§ 70.04, 70.08) is foreclosed from appellate review (*see People v Haynes*, 70 AD3d 718, 719; *People v Lassiter*, 48 AD3d 700). The defendant's valid waiver of his right to appeal also bars his challenge to his sentence as constituting cruel and unusual punishment (*see People v Vega*, 24 AD3d 1260; *People v Santilli*, 16 AD3d 1056, 1057; *People v Hidalgo*, 283 AD2d 154; *People v Brathwaite*, 263 AD2d 89, 92).

FLORIO, J.P., LEVENTHAL, CHAMBERS and HALL, JJ., concur.

ENTER:


Matthew G. Kiernan

March 1, 2011

PEOPLE v RODRIGUEZ, CARLOS

Clerk of the Court

March 1, 2011

PEOPLE v RODRIGUEZ, CARLOS