

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

D30386
Y/kmb

_____AD3d_____

Submitted - February 14, 2011

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
JOHN M. LEVENTHAL
SHERI S. ROMAN, JJ.

2009-07379

DECISION & ORDER

The People, etc., respondent,
v Sidney Briggs, appellant.

(Ind. No. 8943/02)

Lynn W. L. Fahey, New York, N.Y. (Erin R. Collins 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 (Gerges, J.), imposed July 30, 2009, which, upon his conviction of rape in the first degree and endangering the welfare of a child, upon a plea of guilty, imposed a period of postrelease supervision in addition to the determinate term of imprisonment previously imposed on December 22, 2003.

ORDERED that the resentence is affirmed.

The defendant was convicted, upon his plea of guilty, of rape in the first degree and endangering the welfare of a child. In 2003, the defendant was sentenced to a determinate term of imprisonment of eight years upon his conviction of rape in the first degree, and a definite term of imprisonment of one year upon his conviction of endangering the welfare of a child, respectively, the terms to run concurrently with each other. In 2009 the defendant was brought before the Supreme Court for resentencing, so that a period of postrelease supervision could be imposed (*see* Penal Law § 70.45).

Since the defendant had not yet been released from incarceration on the original sentence when he was resentenced, his resentencing to a term including the statutorily required period

March 15, 2011

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of postrelease supervision did not subject him to double jeopardy or violate his right to due process of law (see *People v Ware*, 78 AD3d 743, 744; *People v Mislá*, 78 AD3d 735, *lv denied* 16 NY3d 744; *People v Gittens*, 77 AD3d 765; *People v Pruitt*, 74 AD3d 1366; *People v Tillman*, 74 AD3d 1251; *People v Mendez*, 73 AD3d 951; *People v Parisi*, 72 AD3d 989, *lv granted* 15 NY3d 776; *People v Scalerio*, 71 AD3d 1060, 1061; *People v Prendergast*, 71 AD3d 1055, *lv granted* 15 NY3d 808).

MASTRO, J.P., SKELOS, LEVENTHAL and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court