

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

D30719  
Y/kmb

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

Submitted - March 15, 2011

REINALDO E. RIVERA, J.P.  
CHERYL E. CHAMBERS  
L. PRISCILLA HALL  
PLUMMER E. LOTT, JJ.

2010-02209

DECISION & ORDER

The People, etc., respondent,  
v Frederick Benzeno, appellant.

(Ind. No. 1990/02)

---

Robert C. Mitchell, Riverhead, N.Y. (Alfred J. Cicale of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Marion M. Tang of counsel),  
for respondent.

Appeal by the defendant from a resentencing of the County Court, Suffolk County (Braslow, J.), imposed February 4, 2010, pursuant to CPL 440.46, after a hearing, upon his conviction of criminal sale of a controlled substance in the third degree, which sentence was originally imposed, upon his plea of guilty, on April 11, 2003, the resentencing being a determinate term of imprisonment of seven years and a period of postrelease supervision of three years.

ORDERED that the resentencing is modified, on the law, by vacating the period of postrelease supervision of three years; as so modified, the resentencing is affirmed, and the matter is remitted to the County Court, Suffolk County, for the imposition of an appropriate period of postrelease supervision in accordance with Penal Law § 70.45(2)(b).

Contrary to the defendant's contention, the term of imprisonment imposed was not excessive (*see People v Schreter*, 50 AD3d 930; *People v Almanzar*, 43 AD3d 825, 826; *People v Suito*, 90 AD2d 80). However, as the People correctly concede, the three-year period of postrelease supervision imposed exceeds the statutorily authorized maximum (*see* Penal Law § 70.45[2][b]).

April 5, 2011

Page 1.

PEOPLE v BENZENO, FREDERICK

Accordingly, we remit the matter to the County Court, Suffolk County, for the imposition of an appropriate period of postrelease supervision in accordance with Penal Law § 70.45(2)(b).

RIVERA, J.P., CHAMBERS, HALL and LOTT, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court