

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

D30756  
Y/ct

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

Submitted - March 23, 2011

WILLIAM F. MASTRO, J.P.  
DANIEL D. ANGIOLILLO  
RUTH C. BALKIN  
PLUMMER E. LOTT  
ROBERT J. MILLER, JJ.

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2009-11640

DECISION & ORDER

The People, etc., respondent,  
v Tremayne Winfield, appellant.

(Ind. No. 2621-08)

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

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Sandra Courbois of counsel),  
for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Hudson, J.), rendered November 10, 2009, convicting him of criminal possession of a weapon in the second degree (two counts), criminal possession of a weapon in the third degree, assault in the second degree, and resisting arrest, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is modified, on the law, by vacating the sentence imposed on the conviction of criminal possession of a weapon in the third degree; as so modified, the judgment is affirmed, and the matter is remitted to the County Court, Suffolk County, for resentencing on that count.

As the People correctly concede, the determinate sentence of seven years of imprisonment with five years of postrelease supervision, imposed on the defendant as a second felony offender upon his conviction of criminal possession of a weapon in the third degree under Penal Law § 265.02(1), a nonviolent class D felony, was illegal (*see* Penal Law § 70.06[3][d], [4][b]). Thus, we vacate the sentence imposed on that conviction, and remit the matter to the County Court, Suffolk

April 5, 2011

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County, for resentencing thereon (*see People v Jackson*, 65 AD3d 1164, 1165; *People v Switzer*, 55 AD3d 1394, 1395; *People v Penna*, 47 AD3d 844, 845).

MASTRO, J.P., ANGIOLILLO, BALKIN, LOTT and MILLER, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court