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

D31098
C/kmb

_____AD3d_____ Submitted - April 7, 2011

PETER B. SKELOS, J.P.
JOHN M. LEVENTHAL
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2009-09562 DECISION & ORDER

The People, etc., respondent,
v Carmelo DeJesus, appellant.

(Ind. No. 1622/02)

Lynn W. L. Fahey, New York, N.Y. (Ellen Fried of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Karen Wigle-Weiss, and Danielle S. Fenn of counsel), for respondent.

Appeal by the defendant from a resentence of the Supreme Court, Queens County (Erlbaum, J.), imposed September 17, 2009, which, upon his conviction of assault in the first degree, aggravated criminal contempt, and criminal possession of a weapon in the fourth degree, upon a jury verdict, imposed a period of postrelease supervision in addition to the concurrent determinate terms of imprisonment previously imposed on July 1, 2003.

ORDERED that the resentence is affirmed.

The defendant was convicted, after a jury trial, of assault in the first degree, aggravated criminal contempt, and criminal possession of a weapon in the fourth degree. On July 1, 2003, he was sentenced to a determinate term of imprisonment of 10 years on the conviction of assault in the first degree, an indeterminate term of imprisonment of 2⅓ to 7 years on the conviction of aggravated criminal contempt, and a determinate term of imprisonment of 1 year on the conviction of criminal possession of a weapon in the fourth degree. However, the Supreme Court did not impose the statutorily required period of postrelease supervision. On September 17, 2009, the defendant was brought before the Supreme Court for resentencing so the mandatory period of postrelease supervision could be imposed (*see* Penal Law § 70.45; Correction Law § 601-d).

Since the defendant had not yet completed his originally-imposed sentence of imprisonment when he was resentenced, the resentencing to a term including the statutorily required period of postrelease supervision did not subject him to double jeopardy or violate his right to due process of law (*see People v Lingle,* _____ NY3d _____, 2011 NY Slip Op 03308 [2011]).

A court to which a matter has been remitted for resentencing solely for the purpose of imposing a required term of postrelease supervision does not have the authority to consider whether to reduce the defendant's sentence as a whole (*id.*).

SKELOS, J.P., LEVENTHAL, SGROI and MILLER, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court