

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

D31312
G/kmb

_____AD3d_____

Submitted - April 28, 2011

REINALDO E. RIVERA, J.P.
PETER B. SKELOS
ANITA R. FLORIO
LEONARD B. AUSTIN, JJ.

2010-06456

DECISION & ORDER

The People, etc., respondent,
v Wilfredo Feliciano, appellant.

(Ind. No. 8646/03)

Steven Banks, New York, N.Y. (David Crow of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Jodi L. Mandel of counsel; Gamaliel Marrero on the brief), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Demarest, J.), entered June 25, 2010, which, after a hearing, specified and informed him that the court would impose a determinate term of imprisonment of 5½ years, with 3 years of postrelease supervision in the event of a resentencing pursuant to CPL 440.46.

ORDERED that the order is affirmed, and the matter is remitted to the Supreme Court, Kings County, for further proceedings in accordance herewith.

Contrary to the defendant's contention, the Supreme Court providently exercised its discretion in proposing a resentencing of a determinate term of imprisonment of 5½ years, with 3 years of postrelease supervision (*see People v Tutt*, 82 AD3d 1273; *People v Medina*, 81 AD3d 853). In light of the defendant's extensive criminal history and his disciplinary history while incarcerated, a lesser resentencing is not warranted (*see CPL 440.46*[3]; *People v Overton*, _____AD3d_____ [decided herewith]; *People v Tutt*, 82 AD3d 1273; *People v Medina*, 81 AD3d 853; *People v*

May 17, 2011

PEOPLE v FELICIANO, WILFREDO

Page 1.

Almanzar, 43 AD3d 825, 826; *People v Suitte*, 90 AD2d 80). Pursuant to the Drug Law Reform Act of 2009 (CPL 440.46), we remit this matter to the Supreme Court, Kings County, to afford the defendant an opportunity to withdraw his application for resentencing before any resentence is imposed (*see* CPL 440.46[3]; L 2004, ch 738, § 23).

RIVERA, J.P., SKELOS, FLORIO and AUSTIN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court