

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

D31315
H/prt

_____AD3d_____

Submitted - April 11, 2011

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
JEFFREY A. COHEN, JJ.

2009-09614

DECISION & ORDER

The People, etc., respondent,
v Benjamin Smalls, appellant.

(Ind. No. 98-01448)

Marianne Karas, Armonk, N.Y., for appellant, and appellant pro se.

Janet DiFiore, District Attorney, White Plains, N.Y. (Laurie Sapakoff, Richard Longworth Hecht, and Anthony J. Servino of counsel), for respondent.

Appeal by the defendant from a resentence of the County Court, Westchester County (Zambelli, J.), imposed August 18, 2009, which, upon his convictions of burglary in the first degree, assault in the second degree (two counts), criminal use of a firearm in the first degree, and criminal possession of a weapon in the third degree (three counts), upon a jury verdict, imposed periods of postrelease supervision in addition to the determinate terms of imprisonment previously imposed on December 21, 1999.

ORDERED that the resentence is affirmed.

To the extent that the defendant's claims of ineffective assistance of counsel are based upon matter dehors the record, they may not be reviewed on direct appeal (*see People v Redmon*, 81 AD3d 752; *People v Oquendo*, 71 AD3d 1052, 1052; *People v Surin*, 70 AD3d 731, 732; *People v Shakespeare*, 63 AD3d 861, 861; *People v Ballinger*, 62 AD3d 895, 896; *People v Zimmerman*, 309 AD2d 824, 824). Insofar as we are able to review those claims, defense counsel provided the defendant with meaningful representation (*see People v Caban*, 5 NY3d 143, 152; *People v Henry*, 95 NY2d 563, 564; *People v Benevento*, 91 NY2d 708, 712; *People v Rivera*, 71 NY2d 705, 709).

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The remaining contention raised in the defendant's main brief is unpreserved for appellate review and, in any event, is without merit. The defendant's remaining contentions raised in his pro se supplemental brief are not properly before this Court.

RIVERA, J.P., DICKERSON, HALL and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court