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

D31576
W/kmb

_____AD3d_____ Submitted - May 17, 2011

WILLIAM F. MASTRO, J.P.
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
SHERI S. ROMAN, JJ.

2010-04793 DECISION & ORDER

The People, etc., appellant,
v Larry Allen, respondent.

(Ind. No. 287/00)

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano and John F. McGoldrick of counsel), for appellant.

Lynn W. L. Fahey, New York, N.Y. (Paul Skip Laisure of counsel), for respondent.

Appeal by the People from an order of the Supreme Court, Queens County (Kron, J.), dated April 30, 2010, which, upon the defendant's conviction of burglary in the first degree, criminal possession of a weapon in the second degree (two counts), criminal possession of a weapon in the fourth degree (seven counts), and resisting arrest, upon a jury verdict, granted the defendant's motion pursuant to CPL 440.20 and Penal Law § 70.85 to vacate a resentence of the same court imposed October 14, 2008, which imposed a period of postrelease supervision in connection with his convictions of burglary in the first degree and criminal possession of a weapon in the second degree (two counts) in addition to the determinate terms of imprisonment previously imposed on May 29, 2001, in connection with his convictions on those counts.

ORDERED that the appeal is dismissed as academic.

The People contend that the Supreme Court erred in granting the defendant's motion to vacate a resentence which imposed a period of postrelease supervision (hereinafter PRS) while the defendant was on conditional release. The People ask this Court to reverse the Supreme Court's order and remit the matter to that court for the imposition of a period of PRS. The maximum

expiration date of the defendant's original sentence has passed and, thus, as the defendant correctly contends, the relief sought by the People is beyond this Court's power to grant (*see People v Lingle*, 16 NY3d 621; *People v Williams*, 14 NY3d 198, *cert denied* _____US_____, 131 S Ct 125). Accordingly, the appeal must be dismissed as academic (*see People v Elmendorf*, 83 AD3d 959; *cf. Matter of Johnson v Pataki*, 91 NY2d 214, 222; *Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714).

MASTRO, J.P., DICKERSON, CHAMBERS and ROMAN, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court