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

D31866
G/ct

_____AD3d_____ Submitted - June 7, 2011

PETER B. SKELOS, J.P.
JOHN M. LEVENTHAL
LEONARD B. AUSTIN
SANDRA L. SGROI, JJ.

2009-11711 DECISION & ORDER

The People, etc., respondent,
v Antonio Lopez, appellant.

(Ind. No. 9668/00)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Morgan J. Dennehy of counsel), for respondent.

Appeal by the defendant from a resentence of the Supreme Court, Kings County (Brennan, J.), imposed December 4, 2009, which, upon his conviction of manslaughter in the first degree, upon his plea of guilty, imposed a period of postrelease supervision in addition to the determinate sentence of imprisonment previously imposed on March 25, 2002.

ORDERED that the resentence is affirmed.

In 2002, upon the defendant's conviction of manslaughter in the first degree, the Supreme Court sentenced the defendant to a determinate prison term of 10 years. At that time, however, the Supreme Court failed to impose the statutorily required period of postrelease supervision (hereinafter PRS). On December 4, 2009, the defendant was brought before the Supreme Court for resentencing so that the mandatory period of PRS 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 PRS did not subject him to double jeopardy or violate his right to due process of law (*see*

People v Lingle, 16 NY3d 621; *People v Burgos*, 84 AD3d 975; *People v Hoffman*, 84 AD3d 978; *People v DeJesus*, 84 AD3d 832).

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

ENTER:

Matthew G. Kiernan
Clerk of the Court