

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

D31873
C/kmb

_____AD3d_____

Argued - June 7, 2011

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

2001-07602
2009-03826

DECISION & ORDER

The People, etc., respondent,
v Winston Mendez, also known as
Richard Thomas, appellant.

(Ind. No. 1791/00)

Lynn W. L. Fahey, New York, N.Y. (Jonathan Garvin of counsel), for appellant, and
appellant pro se.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Ellen
C. Abbot, and Daniel Bresnahan of counsel), for respondent.

Appeals by the defendant from (1) a judgment of the Supreme Court, Queens County
(Eng, J.), rendered July 19, 2001, convicting him of assault in the second degree and resisting arrest,
upon a jury verdict, and imposing sentence, and (2) a resentence of the same court (Buchter, J.),
imposed December 19, 2008, which imposed a period of postrelease supervision of 1½ years in
addition to the determinate terms of imprisonment previously imposed.

ORDERED that the appeal from the resentence is dismissed as academic; and it is
further,

ORDERED that the judgment is affirmed.

The defendant's appeal from the resentence must be dismissed as academic, as the
challenged period of postrelease supervision has expired (*see People v Elmendorf*, 83 AD3d 959;
People v Garner, 83 AD3d 862; *People v Rodriguez*, 269 AD2d 613; *People v Hernandez*, 166
AD2d 609).

June 21, 2011

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The defendant's contention that the Supreme Court erred in denying his request to give a justification charge on the count of assault in the second degree is without merit. Because no reasonable view of the evidence supported a justification charge on that count, the Supreme Court properly denied the defendant's request for such a charge (*see People v Rembert*, 52 AD3d 537; *People v Brown*, 33 AD3d 1016).

The defendant's contention that a justification charge should have been given for the count of resisting arrest is unpreserved for appellate review, as he failed to request such a charge for that count (*see People v Smitherman*, 297 AD2d 352). In any event, this contention is without merit.

The contention raised in the defendant's pro se supplemental brief that he was deprived of the effective assistance of counsel is without merit (*see People v Benevento*, 91 NY2d 708, 712; *People v Baldi*, 54 NY2d 137, 147).

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

ENTER:


Matthew G. Kiernan
Clerk of the Court