

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

D32984
G/kmb

_____AD3d_____

Submitted - November 4, 2011

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2010-11453

DECISION & ORDER

The People, etc., respondent,
v Malik Edwards, appellant.

(Ind. No. 213/00)

Lynn W. L. Fahey, New York, N.Y. (Paul Skip Laisure of counsel; Meghan McCarthy on the brief), for appellant.

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

Appeal by the defendant from a resentence of the Supreme Court, Kings County (Dowling, J.), imposed November 15, 2010, which, upon his conviction of attempted murder in the second degree, imposed a period of postrelease supervision of 2½ years, in addition to the determinate sentence of imprisonment originally imposed on October 24, 2000.

ORDERED that the resentence is affirmed.

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 postrelease supervision 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 Dawkins*, 87 AD3d 550; *People v Myrick*, 84 AD3d 1272, *lv denied* 17 NY3d 820).

On an appeal from a resentence to correct a *Sparber* error (*People v Sparber*, 10 NY3d 457), this Court lacks the authority to reconsider the incarceratory component of the

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defendant's sentence (*see People v Lingle*, 16 NY3d at 635; *People v Myrick*, 84 AD3d at 1272).

MASTRO, J.P., FLORIO, LOTT and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court