

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

D33082
G/kmb

_____AD3d_____

Submitted - August 26, 2011

A. GAIL PRUDENTI, P.J.
WILLIAM F. MASTRO
DANIEL D. ANGIOLILLO
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2009-04487
2010-01351
2010-01352

DECISION & ORDER

The People, etc., respondent,
v Ryan Foy, appellant.

(Ind. Nos. 7036/08, 7617/08, 9970/08)

Steven Banks, New York, N.Y. (Adrienne M. Gantt of counsel; Nicholas Flath on the memorandum), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Amy Appelbaum of counsel; Reuben Arnold on the memorandum), for respondent.

Appeals by the defendant, as limited by his motion, from three sentences of the Supreme Court, Kings County (Gary, J., on Indictment No. 7036/08; Foley, J., on Indictment Nos. 7617/08 and 9970/08), all imposed April 17, 2009, on the ground that the sentences were excessive.

ORDERED that the sentences are affirmed.

The defendant's valid waivers of his right to appeal from the judgments of conviction of attempted robbery in the second degree, in satisfaction of Kings County Indictment No. 7617/08, and robbery in the third degree, in satisfaction of Kings County Indictment No. 9970/08, preclude review of his contentions that the sentences imposed thereon were excessive (*see People v Ramos*, 7 NY3d 737, 738; *People v Lopez*, 6 NY3d 248, 255; *People v Hidalgo*, 91 NY2d 733, 735; *People v Pertillar*, 37 AD3d 740). The defendant did not validly waive his right to appeal from the judgment of conviction of criminal possession of a weapon in the second degree, in satisfaction of Kings

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County Indictment No. 7036/08 (*see People v Bradshaw*, 76 AD3d 566, *lv granted* 15 NY3d 896; *cf. People v Ramos*, 7 NY3d at 738). The defendant, however, cannot be heard to complain that his sentence was excessive since he received the sentence promised to him during the plea proceedings (*see People v Martinez*, 78 AD3d 966).

PRUDENTI, P.J., MASTRO, ANGIOLILLO, BELEN and AUSTIN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court