

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

D33353
G/kmb

_____AD3d_____

Submitted - December 2, 2011

MARK C. DILLON, J.P.
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
L. PRISCILLA HALL, JJ.

2008-06085

DECISION & ORDER

The People, etc., respondent,
v Devendra Singh, appellant.

(Ind. No. 1134/04)

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

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

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Wong, J., at plea; Mullings, J., at sentence), rendered June 18, 2008, convicting him of criminal possession of a weapon in the second degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is reversed, on the law, the plea is vacated, and the matter is remitted to the Supreme Court, Queens County, for further proceedings in accordance herewith.

As the People correctly concede, the plea minutes reveal that the defendant was not advised, prior to entering his plea of guilty, that his determinate term of imprisonment would be followed by a mandatory period of postrelease supervision. Therefore, the judgment of conviction must be reversed and the defendant's plea of guilty must be vacated (*see People v Cornell*, 16 NY3d 801, 802; *People v Hill*, 9 NY3d 189, 191, *cert denied* 553 US 1048; *People v Louree*, 8 NY3d 541, 544-545; *People v Catu*, 4 NY3d 242, 245; *People v Peck*, 78 AD3d 1199, 1200; *People v Lindsay*, 72 AD3d 845, 846; *People v Wilcox*, 70 AD3d 1059, 1059).

While the People request that the matter be remitted pursuant to Penal Law § 70.85

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so that the defendant may be resentenced, which resentence would not include a period of postrelease supervision, the plain language of that statute demonstrates that it is not applicable where, as here, the sentencing court explicitly imposed a period of postrelease supervision at sentencing (*see People v Puntervold*, 60 AD3d 1090, 1090-1091; *see also People v Rucker*, 67 AD3d 1126, 1127-1128; *People v Montanez*, 55 AD3d 372, 372-373). We also decline the People’s request that we invoke Judiciary Law § 2-b(3), in effect, to reach the same result that Penal Law § 70.85 would produce, if applicable. Judiciary Law § 2-b(3) provides that “[a] court of record has power . . . to devise and make new process and forms of proceedings, necessary to carry into effect the powers and jurisdiction possessed by it.” By enacting Judiciary Law § 2-b(3), the Legislature has afforded the courts the authority to “fashion necessary procedures consistent with constitutional, statutory, and decisional law” (*People v Wrotten*, 14 NY3d 33, 37, *cert denied* _____US_____, 130 S Ct 2520 [2010]). Implementing Judiciary Law § 2-b(3) in the manner advocated by the People would be contrary to, rather than consistent with, the existing statutory and decisional law on this issue.

DILLON, J.P., ANGIOLILLO, DICKERSON and HALL, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court