

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

D33701
Y/kmb

_____AD3d_____

Argued - January 3, 2012

MARK C. DILLON, J.P.
PLUMMER E. LOTT
SHERI S. ROMAN
JEFFREY A. COHEN, JJ.

2009-11568

DECISION & ORDER

The People, etc., respondent,
v Jonathan Roelofsen, appellant.

(Ind. No. 1721/08)

Lynn W. L. Fahey, New York, N.Y. (Joshua M. Levine of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Nicoletta J. Caferri, and Karen Wigle Weiss of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Blumenfeld, J.), rendered December 3, 2009, convicting him of predatory sexual assault against a child, course of sexual conduct against a child in the first degree, sexual abuse in the first degree, and endangering the welfare of a child, upon a jury verdict, and sentencing him to an indeterminate term of 10 years to life imprisonment on the conviction of predatory sexual assault against a child, a determinate term of 10 years imprisonment on the conviction of course of sexual conduct against a child in the first degree to be followed by a period of 10 years of postrelease supervision, a determinate term of 2 years imprisonment on the conviction of sexual abuse in the first degree to be followed by a period of 10 years of postrelease supervision, and a definite term of 6 months imprisonment on the conviction of endangering the welfare of a child, with all sentences to run concurrently.

ORDERED that the judgment is modified, on the law, by vacating the periods of 10 years of postrelease supervision imposed on the convictions of course of sexual conduct against a child in the first degree and sexual abuse in the first degree; as so modified, the judgment is affirmed, and the matter is remitted to the Supreme Court, Queens County, for the imposition of new terms of postrelease supervision on those convictions.

January 24, 2012

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The defendant's contention that the evidence was legally insufficient to establish his guilt beyond a reasonable doubt is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Hawkins*, 11 NY3d 484, 492). In any event, viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), we find that it was legally sufficient to establish the defendant's guilt of the crimes charged beyond a reasonable doubt. Moreover, in fulfilling our responsibility to conduct an independent review of the weight of the evidence (*see* CPL 470.15[5]; *People v Danielson*, 9 NY3d 342), we nevertheless accord great deference to the jury's opportunity to view the witnesses, hear the testimony, and observe demeanor (*see People v Mateo*, 2 NY3d 383, 410, *cert denied* 542 US 946; *People v Bleakley*, 69 NY2d 490, 495). Upon reviewing the record here, we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Danielson*, 9 NY3d 342; *People v Romero*, 7 NY3d 633).

The defendant's contention that trial counsel's failure to preserve certain claims for appellate review constituted ineffective assistance of counsel is without merit (*see People v Phillips*, 84 AD3d 1274, 1274-1275; *People v Friel*, 53 AD3d 667, 668; *People v McKenzie*, 48 AD3d 594, 595).

As the People correctly concede, the Supreme Court imposed illegal terms of postrelease supervision pursuant to Penal Law § 70.45(2-a) on the convictions of course of sexual conduct against a child in the first degree and sexual abuse in the first degree, since those crimes were committed before the effective date of that subdivision. Thus, the terms of postrelease supervision must be vacated, and the matter remitted to the Supreme Court, Queens County, for the imposition of new terms of postrelease supervision on those convictions pursuant to Penal Law § 70.45(2).

The defendant's remaining contentions are unpreserved for appellate review and, in any event, without merit.

DILLON, J.P., LOTT, ROMAN and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court