

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

D33719  
H/kmb

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Argued - January 5, 2012

DANIEL D. ANGIOLILLO, J.P.  
ANITA R. FLORIO  
CHERYL E. CHAMBERS  
L. PRISCILLA HALL, JJ.

2009-09820

DECISION & ORDER

The People, etc., respondent,  
v Gregory Dantzler, appellant.

(Ind. No. 672/07)

Lynn W. L. Fahey, New York, N.Y. (A. Alexander Donn of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,  
Johnnette Traill, and Rebecca Height of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Buchter, J.), rendered October 6, 2009, convicting him of robbery in the first degree, robbery in the second degree, criminal possession of a weapon in the second degree, criminal possession of stolen property in the fifth degree, and resisting arrest, upon a jury verdict, and sentencing him, inter alia, to concurrent determinate terms of imprisonment of eight years on the conviction of robbery in the first degree, six years on the conviction of robbery in the second degree, six years on the conviction of criminal possession of a weapon in the second degree, and one year on each of the remaining convictions.

ORDERED that the judgment is modified, as a matter of discretion in the interest of justice, by reducing the incarceratory component of the sentence for robbery in the first degree from a determinate term of imprisonment of eight years to a determinate term of imprisonment of six years; as so modified, the judgment is affirmed.

Contrary to the defendant's contention, "the Supreme Court's charge to the jury regarding accomplice liability did not unlawfully amend the indictment or impermissibly introduce

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a new theory of culpability into the case” (*People v Cordice*, 306 AD2d 354, 354; see *People v Buanno*, 296 AD2d 600, 601), because “[w]hether a defendant is charged as a principal or as an accomplice to a crime has no bearing on the theory of the prosecution” (*People v Rivera*, 84 NY2d 766, 769).

However, the sentence imposed was excessive to the extent indicated herein.

ANGIOLILLO, J.P., FLORIO, CHAMBERS and HALL, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court