

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

D34029
C/prt

_____AD3d_____

Submitted - January 30, 2012

DANIEL D. ANGIOLILLO, J.P.
JOHN M. LEVENTHAL
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2011-02852

DECISION & ORDER

The People, etc., respondent,
v Louis Bailey, appellant.

(Ind. No. 8147/01)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Jodi L. Mandel of counsel), for respondent.

Appeal by the defendant from a resentence of the Supreme Court, Kings County (Brennan, J.), imposed March 16, 2011, which, upon his conviction of criminal possession of a weapon in the second degree, imposed a period of postrelease supervision in addition to the determinate term of imprisonment previously imposed by the same court (Chambers, J.), on March 27, 2003.

ORDERED that the resentence is affirmed.

Contrary to the defendant's contention, his 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, since he had not yet completed his originally imposed sentence of imprisonment at the time he was resented (*see People v Lingle*, 16 NY3d 621, 630-632; *People v Mills*, 90 AD3d 1076; *People v Louis*, 90 AD3d 1075; *People v Algarin*, 89 AD3d 859; *People v Harris*, 86 AD3d 543, 543-544).

On an appeal from a resentence to correct a *Sparber* error (*see People v Sparber*, 10

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NY3d 457), this Court lacks the authority to reconsider the incarceratory component of the defendant's sentence (*see People v Lingle*, 16 NY3d at 635; *People v Edwards*, 89 AD3d 1034).

ANGIOLILLO, J.P., LEVENTHAL, AUSTIN and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court