

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

D34299  
H/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - February 8, 2012

REINALDO E. RIVERA, J.P.  
PETER B. SKELOS  
MARK C. DILLON  
DANIEL D. ANGIOLILLO, JJ.

2010-04605

DECISION & ORDER

The People, etc., appellant,  
v John Russ, respondent.

(Ind. Nos. 1949/00, 5467/00)

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Morgan J. Dennehy of counsel), for appellant.

Steven Banks, New York, N.Y. (Elizabeth B. Emmons of counsel), for respondent.

Appeal by the People from an order of the Supreme Court, Kings County (Brennan, J.), dated March 30, 2010, which, upon the defendant's conviction of robbery in the first degree under Indictment No. 1949/00, and his conviction of robbery in the first degree under Indictment No. 5467/00, upon his pleas of guilty, granted the defendant's motion pursuant to CPL 440.20 and Penal Law § 70.85 to vacate resentences of the same court imposed November 6, 2008, which imposed periods of postrelease supervision in addition to the determinate terms of imprisonment previously imposed on December 14, 2000.

ORDERED that the order is reversed, on the law, and the motion is denied.

Since the defendant had not yet completed his originally imposed sentences of imprisonment when he was resentenced, the resentencing to terms including the statutorily required periods of postrelease supervision did not subject him to double jeopardy or violate his right to due process of law (*see People v Lingle*, 16 NY3d 621; *People v Edwards*, 89 AD3d 1034; *People v Douglas*, 89 AD3d 959; *People v Harris*, 89 AD3d 863; *People v Algarin*, 89 AD3d 859, *lv denied* 18 NY3d 881; *People v Dawkins*, 87 AD3d 550). Accordingly, the Supreme Court erred in granting

March 27, 2012

Page 1.

PEOPLE v RUSS, JOHN

the defendant's motion to vacate the resentences.

RIVERA, J.P., SKELOS, DILLON and ANGIOLILLO, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court