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

D34313
H/kmb

_____AD3d_____ Argued - February 8, 2012

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

2010-06891 DECISION & ORDER

The People, etc., appellant,
v Juan Acosta, respondent.

(Ind. No. 7645/01)

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

Steven Banks, New York, N.Y. (Steven J. Miraglia of counsel), for respondent.

Appeal by the People from an order of the Supreme Court, Kings County (Brennan, J.), dated April 21, 2010, which, upon the defendant's conviction of burglary in the second degree, upon his plea of guilty, granted the defendant's motion pursuant to CPL 440.20 and Penal Law § 70.85 to vacate a resentence of the same court imposed October 29, 2008, which imposed a period of postrelease supervision in addition to the determinate term of imprisonment previously imposed on May 21, 2002.

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

Since the defendant had not yet completed his originally imposed sentence of imprisonment when he was resentenced, the 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 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 the defendant's motion to vacate the resentence.

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

ENTER:

Aprilanne Agostino
Clerk of the Court