

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

D34645
W/nl

_____AD3d_____

Submitted - March 28, 2012

MARK C. DILLON, J.P.
RUTH C. BALKIN
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2010-02095

DECISION & ORDER

The People, etc., respondent,
v Rakem Cooke, appellant.

(Ind. No. 4105/99)

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; Jaclyn Goodman on the brief), for respondent.

Appeal by the defendant from a second resentence of the Supreme Court, Kings County (Brennan, J.), imposed November 13, 2009, which, upon his conviction of manslaughter in the first degree, upon his plea of guilty, imposed a period of postrelease supervision in addition to the determinate sentence of imprisonment previously imposed upon his first resentence on February 17, 2000.

ORDERED that the second resentence is affirmed.

Since the defendant was still serving his first resentence when the second resentence was imposed, the second resentence to a term including the statutorily required period of postrelease supervision (hereinafter PRS) did not subject him to double jeopardy or violate his right to due process of law (*see People v Lingle*, 16 NY3d 621, 630-633; *People v Thompson*, 92 AD3d 812; *People v Harris*, 86 AD3d 543, 543-544). As the second resentence was limited to the correction of the erroneous failure to impose PRS at the original sentencing and the first resentencing, we have no authority to reduce the sentence of imprisonment in the interest of justice on this appeal (*see People v Lingle*, 16 NY3d at 635; *People v Adams*, 85 AD3d 1192, 1193; *People v Myrick*, 84 AD3d

April 24, 2012

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1272).

DILLON, J.P., BALKIN, BELEN and AUSTIN, JJ., concur.

ENTER:

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Aprilanne Agostino
Clerk of the Court