

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

D34809
O/nl

_____AD3d_____

Submitted - December 30, 2011

WILLIAM F. MASTRO, A.P.J.
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
L. PRISCILLA HALL, JJ.

2011-02211

DECISION & ORDER

The People, etc., respondent,
v Anton M. Miles, appellant.

(Ind. No. 1579-10)

Maureen Galvin Dwyer, Northport, N.Y., for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Grazia DeVincenzo of counsel), for respondent.

Appeal by the defendant, as limited by his motion, from a sentence of the County Court, Suffolk County (Braslow, J.), imposed February 7, 2011, on the ground that the sentence was illegal.

ORDERED that the sentence is affirmed.

The defendant's contention that his previous conviction did not qualify as a predicate felony conviction pursuant to Penal Law § 70.06(1)(b)(i) is unpreserved for appellate review (*see People v Samms*, 95 NY2d 52, 57; *People v Smith*, 73 NY2d 961, 962-963; *People v Alves*, 282 AD2d 613). In any event, the defendant was properly sentenced as a second felony offender based upon his predicate conviction of an offense in Illinois which would constitute a felony under New York law (*see People v Smalls*, 293 AD2d 500, 501; *cf. People v Horvath*, 81 AD3d 850). Accordingly, contrary to the defendant's contention on appeal, his sentence was not illegal.

MASTRO, A.P.J., ANGIOLILLO, DICKERSON and HALL, JJ., concur.

ENTER:


Aprilanne Agostino

Clerk of the Court

May 8, 2012

PEOPLE v MILES, ANTON M.