

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

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_____AD3d_____

Argued - June 8, 2012

RUTH C. BALKIN, J.P.
L. PRISCILLA HALL
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2009-09232

DECISION & ORDER

The People, etc., respondent,
v Andre Jones, appellant.

(Ind. No. 1406/07)

Lynn W. L. Fahey, New York, N.Y. (David P. Greenberg of counsel), for appellant,
and appellant pro se.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Nicoletta J. Caferri, and Emil Bricker of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Lasak, J.), rendered September 23, 2009, convicting him of manslaughter in the first degree and criminal possession of a weapon in the third degree, upon a jury verdict, and sentencing him to a determinate term of imprisonment of 25 years, to be followed by five years of postrelease supervision for the conviction of manslaughter in the first degree, and a concurrent indeterminate term of imprisonment of 2 to 6 years on the conviction of criminal possession of a weapon in the third degree.

ORDERED that the judgment is modified, as a matter of discretion and in the interest of justice, by reducing the sentence of imprisonment for manslaughter in the first degree from a determinate term of imprisonment of 25 years to a determinate term of imprisonment of 20 years, to be followed by 5 years of postrelease supervision; as so modified, the judgment is affirmed.

Contrary to the defendant's contention, the court did not abdicate its discretionary responsibilities in rendering its *Sandoval* ruling (*see People v Sandoval*, 34 NY2d 371), inasmuch as it permitted inquiry as to six of the defendant's prior convictions, but precluded inquiry into the underlying facts of the two most recent convictions and precluded any inquiry as to another prior

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conviction (*see People v Ramirez*, 206 AD2d 491; *People v Aguilera*, 156 AD2d 698).

Contrary to the People's contention, the prosecutor improperly used a witness's prior written statement to refresh her recollection "in a manner that disclose[d] its contents to the trier of the facts" (CPL 60.35[3]). However, this error was harmless, as there was overwhelming evidence of the defendant's guilt, and no significant probability that the error contributed to his conviction (*see People v Abdur-Rahman*, 69 AD3d 951; *People v Spurgeon*, 63 AD3d 863; *People v Solomon*, 16 AD3d 701, 702). The defendant's contentions regarding the subsequent failure of the court to give a limiting instruction pursuant to CPL 60.35, and the prosecutor's reference to the witness's prior statement during summation, are unpreserved for appellate review (*see* CPL 470.05[2]), and we decline to review them in the exercise of our interest of justice jurisdiction (*see* CPL 470.15[6][a]).

The contention raised by the defendant in his pro se supplemental brief that his warrantless arrest was illegal is unpreserved for appellate review (*see* CPL 470.05[2]), and we decline to review it in the exercise of our interest of justice jurisdiction (*see* CPL 470.15[6][a]).

Under the circumstances of this case, the sentence imposed was excessive to the extent indicated herein.

The defendant's remaining contentions are without merit.

BALKIN, J.P., HALL, LOTT and COHEN, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court