

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

D35635
Y/kmb

_____AD3d_____

Argued - June 5, 2012

PETER B. SKELOS, J.P.
MARK C. DILLON
JOHN M. LEVENTHAL
SANDRA L. SGROI, JJ.

2010-10030

DECISION & ORDER

The People, etc., respondent,
v James Gillespie, appellant.

(Ind. No. 2468/09)

Lynn W. L. Fahey, New York, N.Y. (De Nice Powell of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Ellen C. Abbot, and Daniel Bresnahan of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Buchter, J.), rendered September 23, 2010, convicting him of rape in the first degree, criminal sexual act in the first degree, and robbery in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contentions regarding certain comments made by the prosecutor on summation are unpreserved for appellate review (*see* CPL 470.05[2]; *People v Utley*, 45 NY2d 908, 910), and we decline to review them in the exercise of our interest of justice jurisdiction.

Contrary to the defendant's contention, he was not deprived of the effective assistance of counsel. Considering the totality of the evidence, the law, and the circumstances of the case, trial counsel provided meaningful representation (*see People v Benevento*, 91 NY2d 708, 712; *see also People v Cass*, 18 NY3d 553, 564).

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

July 18, 2012

PEOPLE v GILLESPIE, JAMES

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The defendant's remaining contentions are without merit.

SKELOS, J.P., DILLON, LEVENTHAL and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court