

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

D36133
N/kmb

_____AD3d_____

Submitted - September 14, 2012

DANIEL D. ANGIOLILLO, J.P.
THOMAS A. DICKERSON
ARIEL E. BELEN
ROBERT J. MILLER, JJ.

2011-06991

DECISION & ORDER

The People, etc., respondent, v Peter C. McDaniel,
also known as Corey McDaniel, appellant.

(Ind. No. 82/99)

Thomas N. N. Angell, Poughkeepsie, N.Y. (Steven Levine of counsel), for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Kirsten A. Rappleyea of counsel), for respondent.

Appeal by the defendant from a resentence of the County Court, Dutchess County (Forman, J.), imposed July 21, 2011, which, upon his convictions of assault in the first degree and assault in the second degree (two counts), upon a jury verdict, imposed periods of postrelease supervision of five years for each conviction, to run concurrently with each other, in addition to the concurrent determinate terms of imprisonment previously imposed on May 15, 2000, as modified by a decision and order of this Court dated June 3, 2002 (*see People v McDaniel*, 295 AD2d 371).

ORDERED that the resentence is affirmed.

The defendant's contention that the County Court was without authority to resentence him after the expiration of the time limits set forth in Correction Law § 601-d(4)(c) and (d) is without merit (*see People v Velez*, 19 NY3d 642). Moreover, contrary to the defendant's contention, his resentence after the expiration of the time limits set forth in Correction Law § 601-d(4)(c) and (d) did not subject him to double jeopardy or violate his right to due process. The defendant is presumed to be aware of the relevant law and to know that a determinate prison sentence without a term of postrelease supervision is illegal and, thus, may be corrected by the sentencing court at some point in the future (*see People v Williams*, 14 NY3d 198, 217, *cert denied* _____US_____, 131 S Ct 125; *People v Almestica*, 97 AD3d 834, 835). Nothing in Correction Law § 601-d expressly

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deprives the court of its inherent authority to correct an error in sentencing (*see People v Velez*, 19 NY3d at 645-646), and this interpretation of the law existed prior to the imposition of the defendant's resentence herein (*see People v Thomas*, 68 AD3d 514, 515). Accordingly, the defendant's contention that his constitutional rights were violated is without merit.

ANGIOLILLO, J.P., DICKERSON, BELEN and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court