

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

D36312  
W/hu

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Submitted - September 20, 2012

RANDALL T. ENG, P.J.  
PETER B. SKELOS  
PLUMMER E. LOTT  
JEFFREY A. COHEN, JJ.

2010-03201

DECISION & ORDER

The People, etc., respondent,  
v Bushawn Shelton, appellant.

(Ind. No. 1184/09)

Steven Banks, New York, N.Y. (Frances A. Gallagher of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Kohm, J.), rendered March 15, 2010, convicting him of criminal possession of a weapon in the second degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that his prosecution in the instant case was barred on the grounds of collateral estoppel and double jeopardy. The defendant's waiver of his right to appeal implicitly waived his constitutional claim to be free from double jeopardy (*see People v Muniz*, 91 NY2d 570, 575; *People v Thorpe*, 2 AD3d 467). The record shows that the defendant's waiver of his right to appeal was knowingly, voluntarily, and intelligently made (*see People v Muniz*, 91 NY2d at 575).

The defendant, by waiving his right to appeal, also waived his claim that his prosecution in the instant case was barred by CPL 40.40 (*cf. People v Marshall*, 24 AD3d 470; *People v Snype*, 19 AD3d 621). In any event, by pleading guilty, the defendant forfeited this claim (*see People v Dodson*, 48 NY2d 36; *People v Prescott*, 104 AD2d 610, *affd* 66 NY2d 216, *cert*

November 7, 2012

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*denied 475 US 1150; People v Cramer, 85 AD2d 832).*

ENG, P.J., SKELOS, LOTT and COHEN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court