

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

D36344  
N/ct

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - October 2, 2012

REINALDO E. RIVERA, J.P.  
RUTH C. BALKIN  
JOHN M. LEVENTHAL  
CHERYL E. CHAMBERS, JJ.

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2010-00269

DECISION & ORDER

The People, etc., respondent,  
v Jose Batista, appellant.

(Ind. No. 09-00074)

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Gary E. Eisenberg, New City, N.Y., for appellant, and appellant pro se.

Thomas P. Zugibe, District Attorney, New City, N.Y. (Itamar J. Yeger of counsel;  
Benjamin J. Stanger on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Rockland County  
(Kelly, J.), rendered December 9, 2009, convicting him of assault in the second degree, upon his plea  
of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's purported waiver of his right to appeal was invalid (*see People v  
Bradshaw*, 18 NY3d 257; *People v Lopez*, 6 NY3d 248) and, thus, does not preclude review of his  
excessive sentence claim. However, contrary to the defendant's contention, the sentence imposed  
was not excessive (*see People v Suitte*, 90 AD2d 80).

The defendant's remaining contentions, raised in his pro se supplemental brief, are  
without merit.

RIVERA, J.P., BALKIN, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court

November 7, 2012

PEOPLE v BATISTA, JOSE