

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

D36841
C/kmb

_____AD3d_____

Submitted - February 14, 2012

MARK C. DILLON, J.P.
DANIEL D. ANGIOLILLO
ANITA R. FLORIO
JEFFREY A. COHEN, JJ.

2009-04297

DECISION & ORDER ON MOTION

People of State of New York, respondent,
v Albert Olin, appellant.

Motion by the defendant for leave to reargue an appeal from an order of the Supreme Court, Kings County, dated April 27, 2009, which was determined by decision and order of this Court dated March 13, 2012.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is,

ORDERED that the motion is granted and, upon reargument, the decision and order of this Court dated March 13, 2012 (*People v Olin*, 93 AD3d 706) is recalled and vacated, and the following decision and order is substituted therefor:

Lynn W. L. Fahey, New York, N.Y. (Kendra L. Hutchinson of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Morgan J. Dennehy of counsel; Robert Ho on the brief), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Dowling, J.), dated April 27, 2009, which, after a hearing, designated him a level three sexual predator pursuant to Correction Law article 6-C.

ORDERED that the order is reversed, on the law, without costs or disbursements.

Under the circumstances of this case, the failure of the defendant's attorney to

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commence a CPLR article 78 proceeding on behalf of the defendant in order to challenge the determination of the Board of Examiners of Sex Offenders (hereinafter the Board) that he was required to register under the Sex Offender Registration Act (*see* Correction Law article 6-C) as a sex offender in New York constituted ineffective assistance of counsel (*cf. People v Reitano*, 68 AD3d 954). Further, as the People correctly concede, the Board should have refrained from requiring the defendant to register as a sex offender, as his underlying California offense could not serve as a basis for eligibility (*see* Correction Law § 168-a[2][d][ii]).

The defendant's remaining contentions need not be reached in light of our determination.

DILLON, J.P., ANGIOLILLO, FLORIO and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court