

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

D55900
G/htr

_____AD3d_____

Submitted - March 20, 2018

MARK C. DILLON, J.P.
CHERYL E. CHAMBERS
JOSEPH J. MALTESE
BETSY BARROS, JJ.

2016-12883

DECISION & ORDER

The People, etc., respondent,
v Berinzon Moronta, appellant.

(Ind. No. 15-01303)

Clement S. Patti, Jr., White Plains, NY, for appellant.

Anthony A. Scarpino, Jr., District Attorney, White Plains, NY (Brian R. Pouliot and William C. Milaccio of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Westchester County (Barry E. Warhit, J.), rendered September 14, 2016, convicting him of manslaughter in the first degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

While this appeal was pending, the defendant successfully moved before the Supreme Court, pursuant to CPL 440.20, to vacate his sentence on the ground that the sentencing court had failed to consider whether he should be adjudicated a youthful offender (*see People v Rudolph*, 21 NY3d 497). By order dated March 1, 2018, following a resentencing proceeding, the original sentence was vacated and a resentence was imposed.

The defendant's contention that the sentencing court failed to consider whether he should be adjudicated a youthful offender has been rendered academic by his subsequent resentencing.

The defendant's contention that the original sentence was excessive also has been rendered academic, as that sentence was vacated by the Supreme Court on March 1, 2018, and

July 18, 2018

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superseded by the resentence (*see People v Torres*, 35 AD3d 769; *People v Smith*, 304 AD2d 1077).

As no other contentions have been raised by the defendant, the judgment must be affirmed.

DILLON, J.P., CHAMBERS, MALTESE and BARROS, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court