

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

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_____AD3d_____

Submitted - March 30, 2018

ALAN D. SCHEINKMAN, P.J.
LEONARD B. AUSTIN
ROBERT J. MILLER
SYLVIA O. HINDS-RADIX
JOSEPH J. MALTESE, JJ.

2016-08622

DECISION & ORDER

The People, etc., respondent,
v Jermaine Payne, appellant.

(Ind. No. 6955/13)

Paul Skip Laisure, New York, NY (Charity L. Brady of counsel), for appellant.

Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove and Seth M. Lieberman of counsel; Masha Simonova on the memorandum), for respondent.

Appeal by the defendant, as limited by his motion, from a sentence of the Supreme Court, Kings County (Joseph E. Gubbay, J.), imposed October 13, 2015, upon his plea of guilty, on the ground that the sentence was excessive.

ORDERED that the sentence is affirmed.

The defendant's purported waiver of his right to appeal was invalid because, among other things, the Supreme Court's oral colloquy improperly conflated the right to appeal with the rights automatically forfeited by a plea of guilty (*see People v Mack*, 142 AD3d 1185; *People v Flores*, 139 AD3d 753, 753). Nevertheless, the sentence imposed was not excessive (*see People v Suinte*, 90 AD2d 80).

SCHEINKMAN, P.J., AUSTIN, MILLER, HINDS-RADIX and MALTESE, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court

August 15, 2018

PEOPLE v PAYNE, JERMAINE