

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

907

**KA 09-00934**

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, PINE, AND GORSKI, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

AARON J. VIEHDEFFER, DEFENDANT-APPELLANT.

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GARY A. HORTON, PUBLIC DEFENDER, BATAVIA (BRIDGET L. FIELD OF COUNSEL), FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (WILLIAM G. ZICKL OF COUNSEL), FOR RESPONDENT.

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Appeal from a resentencing of the Genesee County Court (Robert C. Noonan, J.), rendered December 10, 2008. Defendant was resentenced upon his conviction of burglary in the second degree.

It is hereby ORDERED that the resentencing so appealed from is unanimously reversed on the law, the original sentence is reinstated and the matter is remitted to Genesee County Court for proceedings pursuant to CPL 470.45.

Memorandum: Defendant appeals from a resentencing pursuant to which, following a hearing, County Court sentenced him to a five-year period of postrelease supervision. We agree with defendant that the court erred in imposing a period of postrelease supervision after he had been conditionally released from the previously imposed determinate sentence of incarceration. Inasmuch as he had been released from custody, defendant had "a legitimate expectation that the sentence, although illegal under the Penal Law, is final[,] and the Double Jeopardy Clause prevents a court from modifying the sentence to include a period of postrelease supervision" (*People v Williams*, 14 NY3d 198, 219-220; see *People v Appleby*, 71 AD3d 1545).

Entered: July 2, 2010

Patricia L. Morgan  
Clerk of the Court