

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

1026

KA 21-00342

PRESENT: WHALEN, P.J., LINDLEY, MONTOUR, OGDEN, AND DELCONTE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MARK L. WILLIAMS, DEFENDANT-APPELLANT.

JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (DREW R. DUBRIN OF COUNSEL),
FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (MARTIN P. MCCARTHY, II,
OF COUNSEL), FOR RESPONDENT.

Appeal from a resentencing of the Monroe County Court (Douglas A. Randall, J.), rendered October 22, 2019. Defendant was resentenced upon his conviction of robbery in the first degree and criminal possession of a weapon in the third degree.

It is hereby ORDERED that the resentencing so appealed from is unanimously affirmed.

Memorandum: Defendant was convicted in 2002 upon a jury verdict of robbery in the first degree (Penal Law § 160.15 [4]) and criminal possession of a weapon in the third degree (§ 265.02 [former (4)]), and County Court failed to impose a period of postrelease supervision (PRS) with respect to those counts as required by Penal Law § 70.45 (1). Defendant contends that, because he had served more than 17 years of his original 25-year sentence of imprisonment, the sentencing court violated his constitutional rights against double jeopardy and to due process by resentencing him pursuant to Correction Law § 601-d and pronouncing the relevant period of PRS. Even assuming, arguendo, that defendant's contentions do not require preservation (*cf. People v Woods*, 122 AD3d 1400, 1401 [4th Dept 2014], *lv denied* 25 NY3d 1210 [2015]; *People v Smikle*, 112 AD3d 1357, 1358 [4th Dept 2013], *lv denied* 22 NY3d 1141 [2014]; see generally *People v Williams*, 14 NY3d 198, 220-221 [2010], *cert denied* 562 US 947 [2010]), we nevertheless conclude that they lack merit.

Inasmuch as defendant had not yet completed his originally imposed sentence of imprisonment when he was resentenced, " 'his resentencing to a term including the statutorily required period of postrelease supervision did not violate the double jeopardy or due process clauses of the United States Constitution' " (*People v Drake*, 126 AD3d 1382, 1383 [4th Dept 2015], *lv denied* 26 NY3d 1144 [2016]; see *People v Lingle*, 16 NY3d 621, 630-633 [2011]; *People v Fox*, 104

AD3d 789, 789-790 [2d Dept 2013], *lv denied* 21 NY3d 943 [2013]; *cf. Williams*, 14 NY3d at 217). Defendant's reliance on cases rejected by the Court of Appeals in *Lingle* is misplaced (*see Lingle*, 16 NY3d at 632).

Entered: February 2, 2024

Ann Dillon Flynn
Clerk of the Court