

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

1688

KA 08-02117

PRESENT: SMITH, J.P., FAHEY, CARNI, AND GREEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

SHAWN APPLEBY, DEFENDANT-APPELLANT.

JOHN E. TYO, SHORTSVILLE, FOR DEFENDANT-APPELLANT.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA (JAMES B. RITTS OF COUNSEL), FOR RESPONDENT.

Appeal from a resentence of the Ontario County Court (Craig J. Doran, J.), rendered August 19, 2008. Defendant was resentenced upon his conviction of assault in the second degree.

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

Memorandum: Defendant appeals from a resentence pursuant to which, following a hearing, County Court sentenced him to a five-year period of postrelease supervision (PRS). Defendant had completed serving the determinate term of incarceration originally imposed by the court prior to the date on which the Department of Correctional Services (DOCS) sought a hearing on the issue of defendant's resentencing to a period of PRS. We reverse. "[T]he Double Jeopardy Clause [of the US Constitution Fifth Amendment] prohibits a court from resentencing [a] defendant to the mandatory term of PRS after the defendant has served [his or her] determinate term of imprisonment and has been released from confinement by DOCS" (*People v Williams*, ___ NY3d ___, ___ [Feb. 23, 2010]). We thus conclude that the court erred in resentencing defendant (*see id.* at ___).

Entered: March 19, 2010

Patricia L. Morgan
Clerk of the Court