



People v. Jordan

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GABRIEL M. KRAUSMAN, J.P., WILLIAM F. MASTRO, REINALDO E. RIVERA and ROBERT A. SPOLZINO, JJ.

DECISION & ORDER

(S.C.I. No. 60/04)

ORDERED that the sentence is affirmed insofar as appealed from.

Contrary to the defendant's contention, the County Court did not violate Penal Law § 70.45 by imposing a post-release supervision term of five years for his conviction of assault in the second degree. Pursuant to Penal Law § 70.45(2), the period of post-release supervision for a determinate sentence "shall be five years, except that such period shall be three years whenever a determinate sentence is imposed pursuant to section 70.02 of this article upon a conviction for a class D or class E violent felony offense." Although assault in the second degree is a class D violent felony, the defendant was adjudicated a second felony offender, and thus sentenced pursuant to Penal Law § 70.06(6) rather than Penal Law § 70.02. Accordingly, the imposition of a five-year term of post-release supervision was required (see *People v Chestnut*, 18 AD3d 965; *People v Steadman*, 308 AD2d 415; *People v Bell*, 305 AD2d 694).

KRAUSMAN, J.P., MASTRO, RIVERA and SPOLZINO, JJ., concur.

