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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.  
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No. 214  
The People &c.,  
Respondent,  
v.  
Jamel Bell,  
Appellant.

Peter Theis, for appellant.  
Sheryl Feldman, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed.

Defendant challenges his adjudication as a persistent violent felony offender (Penal Law § 70.08), contending that the procedure called for by CPL §§ 400.15 and 400.16 deprives him of his constitutional right to trial by jury. Defendant's argument

is barred by United States v Almendarez-Torres (523 US 224 [1998]), which permits sentencing proceedings in which the fact of previous criminal convictions is found by a court sitting without a jury. Though several of our recent cases rely on Almendarez-Torres's holding (see People v Quinones, 12 NY3d 116 [2009]; People v Rivera, 5 NY3d 61 [2005]; People v Rosen, 96 NY2d 329 [2001]), defendant now invites us to reject it, and to hold that the New York State Constitution requires all facts that may enhance a defendant's sentence, including the fact of a prior conviction, to be found by a jury. Defendant would thus have us go beyond the United States Supreme Court's ruling in Apprendi v New Jersey (530 US 466 [2000]) and later decisions applying Apprendi.

We decline defendant's invitation. We see no reason to hold that the right of trial by jury under Article I, § 2 of our Constitution is broader in this respect than the jury trial right protected by the Sixth Amendment to the Constitution of the United States.

Defendant's claim in his pro se brief that he was deprived of his right to a speedy trial is unpreserved. His remaining contentions are without merit.

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Order affirmed, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided December 14, 2010