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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.  
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No. 215 SSM 44  
The People &c.,  
Respondent,  
v.  
Ramon Ramos,  
Appellant.

Submitted by William B. Carney, for appellant, and by  
appellant, pro se.  
Submitted by Rebecca Height, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed.

The prosecution was not barred by the five-year statute  
of limitations pursuant to CPL 30.10 (2) (b). Although the

indictment was nearly 10 years after the incident, defendant's whereabouts were "continuously unknown and continuously unascertainable," despite the reasonable diligence of the detectives assigned to the case, until his DNA profile from the rape kit taken from the victim was matched to DNA evidence taken from defendant pursuant to a subsequent incarceration (CPL 30.10 [4] [a] [ii]; see also Executive Law §§ 995 [7], 995-c [3]; People v Seda, 93 NY2d 307, 311 [1999]; People v Brown, \_\_\_ NY3d \_\_\_, 2009 Slip Op 08475 [2009]).

Defendant's contentions that the extension of the statute of limitation in this case constituted an ex post facto law and that his sentencing as a persistent felony offender violated his right to due process of law are not preserved for review. Defendant's remaining arguments lack merit.

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On review of submissions pursuant to section 500.11 of the Rules, order affirmed, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided December 15, 2009