

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Argued - November 21, 2006

HOWARD MILLER, J.P.
STEPHEN G. CRANE
ROBERT A. LIFSON
MARK C. DILLON, JJ.

2005-04560

DECISION & ORDER

The People, etc., respondent,
v James Hightower, appellant.

(Ind. No. 1566/04)

Lynn W. L. Fahey, New York, N.Y. (Katherine R. Schaefer of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Ellen C. Abbot, and Paul G. Scotti of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Dunlop, J.), rendered April 28, 20005, convicting him of criminal possession of a weapon in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that he was denied the effective assistance of counsel is without merit. A review of the circumstances in totality as of the time of the representation reveals that the defendant was afforded meaningful representation (*see People v Henry*, 95 NY2d 563, 565; *People v Baldi*, 54 NY2d 137, 147). The defendant failed to demonstrate that there were no strategic or other legitimate explanations for his attorney's alleged shortcomings, and therefore failed to overcome the presumption that "counsel acted in a competent manner and exercised professional judgment" (*People v Rivera*, 71 NY2d 705, 709; *see People v Taylor*, 1 NY3d 174, 177; *People v*

Benevento, 91 NY2d 708, 712).

MILLER, J.P., CRANE, LIFSON and DILLON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court