

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

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_____AD3d_____

Argued - December 5, 2006

ROBERT A. SPOLZINO, J.P.
DAVID S. RITTER
ROBERT J. LUNN
DANIEL D. ANGIOLILLO, JJ.

2004-02880

DECISION & ORDER

The People, etc., respondent,
v Clinton Tannis, appellant.

(Ind. No. 5367/03)

Lynn W. L. Fahey, New York, N.Y. (Denise A. Corsí of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Diana Villanueva of counsel; Carmencita-Mia Q. Fulgado on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Marrus, J.), rendered March 17, 2004, convicting him of robbery in the second degree (two counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant failed to preserve for appellate review his contention regarding the preliminary instructions given to the jury (*see* CPL 270.40; 310.10[2]). In any event, the contention is without merit (*see People v Fleming*, 270 AD2d 498).

The defendant failed to preserve for appellate review his contention that the sentence imposed by the Supreme Court improperly penalized him for exercising his right to a jury trial, since he did not raise the issue at the time of sentencing (*see People v Hargroves*, 27 AD3d 765, *lv denied* 7 NY3d 789; *People v Best*, 295 AD2d 441). In any event, the defendant's contention is without merit. The record discloses no vindictiveness on the part of the Supreme Court in arriving at the sentence, and the fact that the sentence imposed after trial was greater than that offered during plea

negotiations is no indication that the defendant was punished for asserting his right to proceed to trial (*see People v Bellilli*, 270 AD2d 355). The sentence imposed was not otherwise excessive (*see People v Suitte*, 90 AD2d 80).

SPOLZINO, J.P., RITTER, LUNN and ANGIOLILLO, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court