

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

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_____AD3d_____

Submitted - December 5, 2006

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

2001-10936

DECISION & ORDER

The People, etc., respondent,
v Prateek Sharma, appellant.

(Ind. No. 489/01)

Theodore W. Robinson, P.C., Mineola, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Tammy J. Smiley and Cristin N. Connell of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Boklan, J.), rendered November 15, 2001, convicting him of murder in the second degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that he was deprived of the effective assistance of counsel because his attorney failed to perform the investigation needed to obtain and present evidence that the victim's death was the result of medical malpractice, not the stab wound to his head inflicted by the defendant, is not reviewable on direct appeal because it is based on matter dehors the record (*see People v Rivera*, 33 AD3d 942; *People v Whitaker*, 27 AD3d 499). On the record before this court, the defendant was not deprived of the effective assistance of counsel (*see People v Rivera, supra*).

January 16, 2007

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The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

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

ENTER:

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

James Edward Pelzer
Clerk of the Court