

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

D13638
C/mv

_____AD3d_____

Argued - December 15, 2006

ROBERT W. SCHMIDT, J.P.
STEPHEN G. CRANE
PETER B. SKELOS
STEVEN W. FISHER, JJ.

2004-10717

DECISION & ORDER

The People, etc., respondent,
v Marcus McKissick, appellant.

(Ind. No. 8323/03)

Lynn W. L. Fahey, New York, N.Y. (Tonya Plank of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Del Giudice, J.), rendered November 9, 2004, convicting him of robbery in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the prosecutor made improper comments during summation is without merit inasmuch as the challenged remarks were fair comment on the evidence, permissible rhetorical remarks, or appropriate responses to the defense counsel's summation (*see People v Simon*, 34 AD3d 852; *People v Garner*, 27 AD3d 764; *cf. People v Ashwal*, 39 NY2d 105).

Moreover, the defendant's failure at sentencing to specify any particular allegation or allegations in the predicate felony statement he wished to controvert resulted in all allegations in the statement being deemed admitted (*see CPL 400.15[3]*). Accordingly, the defendant was properly

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adjudicated a second violent felony offender, and his belated claim at sentencing that he had been afforded inaccurate advice by his counsel before pleading guilty to the prior felony was, under the circumstances of this case, insufficient to warrant a hearing (*see People v Espinoza*, 241 AD2d 554, 555; *see also People v Myron*, 28 AD3d 681, 684).

SCHMIDT, J.P., CRANE, SKELOS and FISHER, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court