

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

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_____AD3d_____

Submitted - January 5, 2007

WILLIAM F. MASTRO, J.P.
GABRIEL M. KRAUSMAN
STEVEN W. FISHER
ROBERT A. LIFSON, JJ.

2001-05693

DECISION & ORDER

The People, etc., respondent,
v Howard Campbell, appellant.

(Ind. No. 284/01)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Jodi L. Mandel, and Robert D. Shapiro of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Gerges, J.), rendered June 18, 2001, convicting him of criminal possession of a controlled substance in the third degree, criminal possession of a weapon in the third degree, criminal sale of marijuana in the fourth degree, unlawful possession of marijuana, and resisting arrest, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is modified, on the law, by vacating the sentence imposed for the crime of criminal possession of a controlled substance in the fourth degree, a crime for which the defendant was not convicted; as so modified, the judgment is affirmed.

In light of the overwhelming nature of the proof of guilt and the court's limiting instructions on the use the jury could make of evidence of the defendant's prior convictions, the court's *Sandoval* ruling (*see People v Sandoval*, 34 NY2d 371) did not deprive the defendant of a fair trial and does not warrant reversal (*see People v Myron*, 28 AD3d 681).

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However, the sentence for criminal possession of a controlled substance in the fourth degree reflected in the sentencing minutes must be vacated, as the minutes of the verdict demonstrate that the defendant was not convicted of that offense.

MASTRO, J.P., KRAUSMAN, FISHER and LIFSON, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court