

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

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_____AD3d_____

Submitted - February 9, 2007

STEPHEN G. CRANE, J.P.
ANITA R. FLORIO
STEVEN W. FISHER
THOMAS A. DICKERSON, JJ.

2004-04753

DECISION & ORDER

The People, etc., respondent,
v Lee Anthony McLeod, appellant.

(Ind. No. 03-00273)

Phillip J. Murphy, Nanuet, N.Y., for appellant.

Michael E. Bongiorno, District Attorney, New City, N.Y. (Argiro Kosmetatos of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Rockland County (Resnik, J.), rendered April 29, 2004, convicting him of manslaughter in the first degree, criminal possession of a weapon in the second degree, and criminal possession of a weapon in the third degree, upon a jury verdict, and sentencing him to concurrent determinate terms of imprisonment of 25 years for manslaughter in the first degree, 15 years for criminal possession of a weapon in the second degree, and 7 years for criminal possession a weapon in the third degree.

ORDERED that the judgment is modified, as a matter of discretion in the interest of justice, by reducing the term of imprisonment for manslaughter in the first degree from 25 years to 18 years and criminal possession of a weapon in the second degree from 15 years to 10 years; as so modified, the judgment is affirmed.

The trial court's failure to charge the lesser-included offense of criminally negligent homicide was not error. Because the court charged the lesser-included offense of manslaughter in the second degree, and the defendant was convicted of manslaughter in the first degree, "the court's refusal to charge the more remote lesser-included offense of criminally negligent homicide cannot be a basis for reversal" (*People v McMurry*, 30 AD3d 444).

March 20, 2007

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The sentence imposed was excessive to the extent indicated herein (*see People v Suito*, 90 AD2d 80).

The defendant's remaining contention is without merit.

CRANE, J.P., FLORIO, FISHER and DICKERSON, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court