

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

D14487
O/cb

_____AD3d_____

Argued - February 16, 2007

REINALDO E. RIVERA, J.P.
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

2005-08265

DECISION & ORDER

The People, etc., respondent,
v Darnell Epps, appellant.

(Ind. No. 2533/00)

Abraham Abramovsky, New York, N.Y. (Peter A Sell, Robert M. Grossman, and Jonathan I. Edelstein of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Phyllis Mintz of counsel), for respondent.

Appeal by the defendant, by permission, from an order of the Supreme Court, Kings County (Reichbach, J.), dated August 1, 2005, which denied, without a hearing, his motion pursuant to CPL 440.10 to vacate a judgment of the same court dated November 15, 2000, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the order is affirmed.

Contrary to the defendant's contention, *People v Payne* (3 NY3d 266) and *People v Suarez* (6 NY3d 202) do not apply retroactively (*see Policano v Herbert*, 7 NY3d 588; *People v Pepper*, 53 NY2d 213, 221). Even under the standard espoused in *People v Hafeez* (100 NY2d 253), which was decided after this court rendered its decision and order on the defendant's direct appeal (*see People v Epps*, 305 AD2d 697) but before his conviction became final (*see Policano v Herbert, supra*), the evidence was legally sufficient to establish the defendant's guilt beyond a reasonable doubt (*see People v Vaughn*, 2 AD3d 656; *People v Marsh*, 140 AD2d 631).

March 27, 2007

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The defendant's remaining claims regarding alleged ineffective assistance of trial counsel are procedurally barred (*see* CPL 440.10 [2][a], [c]).

RIVERA, J.P., SANTUCCI, ANGIOLILLO and DICKERSON, 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