

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

D14521
Y/gts

_____AD3d_____

Submitted - September 27, 2006

ROBERT W. SCHMIDT, J.P.
WILLIAM F. MASTRO
DAVID S. RITTER
STEVEN W. FISHER
MARK C. DILLON, JJ.

2005-01459

DECISION & ORDER ON MOTION

The People, etc., respondent,
v Julian Stanley, appellant.

(Ind. No. 6772/04)

Motion by the appellant for leave to reargue an appeal from a judgment of the Supreme Court, Kings County (Balter, J.), rendered January 24, 2005, which was determined by decision and order of this court dated November 14, 2006.

Upon the papers filed in support of the motion and the papers filed in relation thereto, it is

ORDERED that the motion for leave to reargue is granted, and upon reargument, the decision and order of this court dated November 14, 2006, is recalled and vacated, and the following decision and order is substituted therefor:

Lynn W. L. Fahey, New York, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Ann Bordley of counsel; Melissa J. Erwin on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Balter, J.), rendered January 24, 2005, convicting him of criminal possession of a weapon in the third degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

March 27, 2007

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The defendant pleaded guilty with the understanding that he would not receive youthful offender treatment, and he failed to object or move to withdraw his plea on this ground. Accordingly, his contention that the court should have granted him youthful offender treatment is unpreserved for appellate review (*see People v Ciminera*, 202 AD2d 684, 685; *see also People v Small*, 7 AD3d 819; *People v Fryer*, 2 AD3d 874). In any event, under the circumstances of this case, the denial of youthful offender treatment was a provident exercise of discretion.

SCHMIDT, J.P., MASTRO, RITTER, FISHER and DILLON, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court