

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

D14722
C/cb

_____AD3d_____

Submitted - March 8, 2007

STEPHEN G. CRANE, J.P.
GABRIEL M. KRAUSMAN
JOSEPH COVELLO
EDWARD D. CARNI, JJ.

2005-06274

DECISION & ORDER

The People, etc., respondent,
v Robert Elliott, appellant.

(Ind. No. 922/04)

Michael G. Paul, New City, N.Y., for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (David R. Huey of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (DeRosa, J.), rendered June 13, 2005, convicting him of manslaughter in the first degree, criminal possession of a weapon in the third degree, and aggravated criminal contempt, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to suppress his statements to the police.

ORDERED that the judgment is affirmed.

The defendant failed to create a record sufficient to permit appellate review of his claim that certain incriminating statements that he made to the police were obtained in violation of his right to counsel (*see People v Kinchen*, 60 NY2d 772, 773-774; *People v Flournoy*, 303 AD2d 762). Furthermore, the defendant's contention that those statements were obtained in violation of his right to remain silent is without merit (*see People v Stanley*, 292 AD2d 472, 473; *People v Rumph*, 260 AD2d 156, 157). In addition, the totality of the circumstances surrounding the making of the statements supports the hearing court's conclusion that they were voluntarily made (*see People v Huntley*, 15 NY2d 72, 78). Accordingly, the hearing court correctly denied suppression of those statements.

April 10, 2007

PEOPLE v ELLIOTT, ROBERT

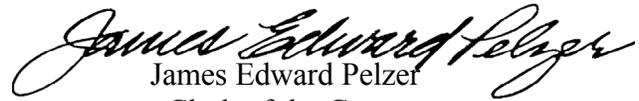
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The defendant's claim of ineffective assistance of counsel may, in part, not be reviewed on direct appeal because it involves matters dehors the record (*see People v Ruiz*, 36 AD3d 722). Insofar as we are able to review the defendant's claim, the defendant was provided with meaningful representation (*see People v Benevento*, 91 NY2d 708, 714; *People v Thomas*, 244 AD2d 271).

The defendant's contentions with respect to his adjudication as a persistent felony offender are without merit (*see CPL 400.20[3]*; *see also CPLR 4518[a]*). Furthermore, the sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80, 85-87).

CRANE, J.P., KRAUSMAN, COVELLO and CARNI, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court