

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

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_____AD3d_____

Submitted - March 12, 2007

ROBERT A. SPOLZINO, J.P.
GLORIA GOLDSTEIN
STEVEN W. FISHER
WILLIAM E. McCARTHY, JJ.

2004-03919

DECISION & ORDER

The People, etc., respondent,
v John Nuniz, a/k/a John Nunez, appellant.

(Ind. No. 35/03)

Lynn W. L. Fahey, New York, N.Y. (Barry Stendig of counsel), for appellant, and appellant pro se.

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

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Collini, J.), rendered April 26, 2004, convicting him of attempted murder in the second degree, assault in the first degree, assault in the second degree (two counts), criminal possession of a weapon in the third degree (two counts), reckless endangerment in the first degree, and reckless endangerment in the second degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is modified, on the law, by reducing the terms of imprisonment imposed on the convictions of attempted murder in the second degree and both counts of assault in the first degree from 15 years to 13 years; as so modified, the judgment is affirmed.

As the People correctly concede, the Supreme Court improperly imposed a sentence greater than that which had been agreed upon at the time of the defendant's plea as a sanction for the defendant's motion to withdraw the plea. Accordingly, we modify the judgment by reducing the terms of imprisonment imposed on the convictions of attempted murder in the second degree and both counts of assault in the first degree to the terms that had originally been negotiated (*see People v Santos*, 13 AD3d 258).

April 24, 2007

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The issue raised in the defendant's supplemental pro se brief is unpreserved for appellate review and, in any event, is without merit.

SPOLZINO, J.P., GOLDSTEIN, FISHER and McCARTHY, 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