

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

D15095
O/gts

_____AD3d_____

Argued - April 9, 2007

STEPHEN G. CRANE, J.P.
GABRIEL M. KRAUSMAN
ROBERT A. LIFSON
RUTH C. BALKIN, JJ.

2005-05519

DECISION & ORDER

The People, etc., respondent,
v George J. Scivolette, appellant.

(Ind. No. 64/04)

Carol Kahn, New York, N.Y., for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Bridget Rahilly Steller and Kirsten A. Rappleyea of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Hayes, J.), rendered May 24, 2005, convicting him of forgery in the second degree (three counts), upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The County Court properly denied the defendant's request to proceed pro se. The request was made in the context of a claim of dissatisfaction with counsel and was not unequivocal (*see People v Mitchell*, 26 AD3d 159, 160; *People v Hirschfeld*, 282 AD2d 337, 338-339, *lv denied* 96 NY2d 919, *cert denied* 534 US 1082; *People v Rainey*, 240 AD2d 682, 683). Moreover, since the defendant, at proceedings which occurred subsequent to his request to proceed pro se, acted in a manner indicating his satisfaction with his counsel, he abandoned his request (*see People v Gillian*, 28 AD3d 577 *aff'd* 8 NY3d 85; *People v Pena*, 7 AD3d 259, 260; *People v Hirschfeld*, *supra* at 339).

The County Court was not required to, sua sponte, conduct a competency hearing pursuant to CPL article 730. A defendant is presumed to be competent, and the court was satisfied

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that, based on its interaction with the defendant and the available information, there was no basis for questioning the defendant's capacity to stand trial (*see People v Tortorici*, 92 NY2d 757, 765, *cert denied* 528 US 834; *People v Morgan*, 87 NY2d 878, 880; *People v Gelikkaya*, 84 NY2d 456, 459; *People v Mathis*, ___ AD3d ___ [1st Dept, Feb. 8, 2007]).

The defendant's contention that a misdemeanor charge of criminal possession of stolen property in the fifth degree was presented to the grand jury is belied by the minutes of the grand jury presentation. Furthermore, any issues relating to proceedings occurring in the Justice Court of the Town of Poughkeepsie on the charge of criminal possession of stolen property in the fifth degree, a misdemeanor (*see* Penal Law § 165.40), are not properly before this court. Such issues can only be reviewed on an appeal from a conviction of that crime to the Supreme Court, Appellate Term for the Ninth and Tenth Judicial Districts (*see* CPL 450.60[3]).

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

The defendant's remaining contentions are either not properly before this court or without merit.

CRANE, J.P., KRAUSMAN, LIFSON and BALKIN, JJ., concur.

2005-05519

DECISION & ORDER ON MOTION

The People, etc., respondent,
v George J. Scivolette, appellant.

(Ind. No. 64/04)

Motion by the appellant on an appeal from a judgment of the County Court, Dutchess County, rendered May 24, 2005, in effect, to release any and all minutes of the grand jury proceedings with respect to the indictment filed June 24, 2004, and a superseding indictment filed July 15, 2004. By decision and order on motion of this court dated February 6, 2006, the motion was referred to the panel of Justices assigned to hear the appeal, to be determined after an in camera review of the minutes in question.

Upon the papers filed in support of the motion and no papers having been filed in opposition or relation thereto, upon the argument of the appeal, and upon an in camera review of the minutes in question, it is

ORDERED that the motion is denied.

CRANE, J.P., KRAUSMAN, LIFSON and BALKIN, 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