

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

D15313
X/gts

_____AD3d_____

Submitted - April 23, 2007

STEPHEN G. CRANE, J.P.
DAVID S. RITTER
ROBERT A. LIFSON
RUTH C. BALKIN, JJ.

2005-11286

DECISION & ORDER

The People, etc., respondent,
v Kenyon Nolcox, appellant.

(S.C.I. No. 05/789)

Mark Diamond, New York, N.Y., for appellant.

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

Appeal by the defendant, as limited by his brief, from a sentence of the County Court,
Orange County (DeRosa, J.), imposed November 14, 2005, upon his conviction of criminal
possession of a weapon in the third degree, after his plea of guilty.

ORDERED that the sentence is affirmed.

The defendant's valid waiver of his right to appeal forecloses review of his claim that
the sentence imposed is excessive (*see People v Oquendo*, 38 AD3d 686). The defendant's
contention, however, that the court failed to exercise its discretion at sentencing (*cf. People v Farrar*,
52 NY2d 302, 306; *People v Tomlinson*, 162 AD2d 563) survives the defendant's waiver of his right
to appeal (*see People v Halston*, 37 AD3d 1144; *People v Schafer*, 19 AD3d 1133). Nevertheless,
the defendant's contention is without merit (*cf. People v Farrar, supra; People v Tomlinson, supra;*
People v Terry, 152 AD2d 822; *People v Dorino*, 145 AD2d 432, 433).

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

ENTER:



James Edward Pelzer
Clerk of the Court

May 29, 2007

PEOPLE v NOLCOX, KENYON