

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

D15387
O/gts

_____AD3d_____

Argued - April 30, 2007

STEPHEN G. CRANE, J.P.
GABRIEL M. KRAUSMAN
STEVEN W. FISHER
ROBERT A. LIFSON, JJ.

2006-02646

DECISION & ORDER

The People, etc., respondent,
v Joseph Williams, appellant.

(Ind. No. 1742/04)

Diane B. Groom, North Babylon, N.Y., for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Marion M. Tang of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Doyle, J.), rendered March 17, 2005, upon his conviction of attempted robbery in the first degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant did not preserve for appellate review his contention that his plea was not knowing, voluntary, and intelligent (*see People v Martin*, 7 AD3d 640, 641; *People v Martinez*, 286 AD2d 447; *People v Crowell*, 273 AD2d 321; *People v Gehy*, 220 AD2d 527; *People v Williams*, 203 AD2d 499; *People v Willingham*, 194 AD2d 703; *cf. People v Toxey*, 86 NY2d 725, 726), and we decline to review it in the exercise of our interest of justice jurisdiction (*see People v Martin, supra; People v Martinez, supra*).

The defendant's claim that he was deprived of his right to effective assistance of counsel is based upon matter dehors the record and therefore is not reviewable on direct appeal (*see People v Murdaugh*, 38 AD3d 918).

June 5, 2007

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The defendant's waiver of his right to appeal was not valid given the court's failure to ensure that the defendant was aware of the rights he was purportedly waiving (*see People v McQuiller*, 19 AD3d 1043, 1044; *People v Piccollo*, 303 AD2d 768; *cf. People v Nicholson*, 6 NY3d 248, 254–255). However, there is no basis to reduce the defendant's sentence (*see People v Kazepis*, 101 AD2d 816).

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

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court