

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

D15476
O/cb

_____AD3d_____

Argued - May 4, 2007

ROBERT W. SCHMIDT, J.P.
REINALDO E. RIVERA
DANIEL D. ANGIOLILLO
RUTH C. BALKIN, JJ.

2004-01968

DECISION & ORDER

The People, etc., respondent,
v Wilfredo Baez, appellant.

(Ind. No. 13125/88)

Lynn W. L. Fahey, New York, N.Y., for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Jeanette Lifschitz, and Rona I. Kugler of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Pitaro, J.), rendered January 19, 1990, convicting him of criminal sale of a controlled substance in the third degree (three counts), criminal possession of a controlled substance in the third degree, and criminal possession of a controlled substance in the seventh degree, after a nonjury trial, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant was not denied the effective assistance of counsel due to the existence of an alleged conflict of interest. A defendant alleging ineffective assistance of counsel based on a conflict of interest must do more than show that the defense counsel had a potential conflict of interest. To prevail, the defendant must establish that “the conduct of his defense was in fact affected by the operation of the conflict of interest,” or that the conflict ‘operated on’ counsel’s representation” (*People v Longtin*, 92 NY2d 640, 644, *cert denied* 526 US 1114, quoting *People v Alicea*, 61 NY2d 23, 31; *see People v Abar*, 99 NY2d 406, 411; *People v Smart*, 96 NY2d 793; *People v Hall*, 28 AD3d 678). The defendant failed to do so.

June 12, 2007

PEOPLE v BAEZ, WILFREDO

Page 1.

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

SCHMIDT, J.P., RIVERA, ANGIOLILLO and BALKIN, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court