

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

D15751
G/hu

_____AD3d_____

Submitted - May 16, 2007

STEPHEN G. CRANE, J.P.
FRED T. SANTUCCI
ANITA R. FLORIO
MARK C. DILLON
RUTH C. BALKIN, JJ.

2006-05016

DECISION & ORDER

The People, etc., respondent,
v Phillip Shands, appellant.

(Ind. No. 05-01383)

Kevin P. Gilleece, White Plains, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Michelle A. Calvi and Valerie A. Livingston of counsel), for respondent.

Appeal by the defendant, as limited by his brief, from so much of a sentence of the County Court, Westchester County (Zambelli, J.), imposed May 2, 2006, as directed that his sentences to a determinate term of imprisonment upon his conviction of attempted criminal sale of a controlled substance in the third degree, upon his plea of guilty, run consecutively to his previously-imposed sentence of a definite term of imprisonment under S.C.I. No. 1094/04 upon his violation of probation.

ORDERED that the sentence is reversed insofar as appealed from, on the law, and the term of imprisonment imposed upon the defendant's conviction of attempted criminal sale of a controlled substance in the third degree shall run concurrently with the sentence previously imposed under S.C.I. No. 1094/04.

Penal Law § 70.35 provides that "the service of an indeterminate or determinate sentence of imprisonment shall satisfy any definite sentence of imprisonment imposed on a person for an offense committed prior to the time the indeterminate or determinate sentence was imposed." The statute contemplates that the definite sentence will be served concurrently with the indeterminate or

June 26, 2007

Page 1.

PEOPLE v SHANDS, PHILLIP

determinate sentence (*see People v Leabo*, 84 NY2d 952, 953). As the People correctly concede, the County Court erred in directing that the term of imprisonment imposed on the conviction of attempted criminal sale of a controlled substance in the third degree run consecutively to the definite sentence of imprisonment previously imposed upon the violation of probation (*see People v Leabo*, *supra* at 953; *People v Walker*, 17 AD3d 610, 611; *People v Lawrence*, 297 AD2d 290, 291; *People v Abbas*, 269 AD2d 456, 457). Accordingly, we reverse the sentence insofar as appealed from.

CRANE, J.P., SANTUCCI, FLORIO, DILLON and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court