

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

D15759  
Y/hu

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Submitted - May 7, 2007

STEPHEN G. CRANE, J.P.  
GLORIA GOLDSTEIN  
JOSEPH COVELLO  
THOMAS A. DICKERSON, JJ.

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2004-07417

DECISION & ORDER

The People, etc., respondent,  
v Evaristo Castaneda, appellant.

(Ind. No. 03-989)

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Joel K. Dranove, New York, N.Y., for appellant.

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

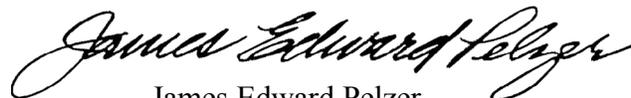
Appeal by the defendant, as limited by his brief, from a sentence of the County Court, Orange County (DeRosa, J.), imposed July 30, 2004, upon his convictions of assault in the second degree and criminal possession of a weapon in the fourth degree, upon a jury verdict, the sentence being concurrent determinate terms of seven years and one year imprisonment, respectively.

ORDERED that the sentence is modified, as a matter of discretion in the interest of justice, by reducing the term of imprisonment for assault in the second degree to a determinate term of four years; as so modified, the sentence is affirmed.

The court, in sentencing the defendant to seven years imprisonment for assault in the second degree, incorrectly stated that the defendant was an alien illegally in the United States. In light of all of the circumstances, we find that the sentence was excessive to the extent indicated herein (*see People v Suitte*, 90 AD2d 80).

CRANE, J.P., GOLDSTEIN, COVELLO and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

July 17, 2007

PEOPLE v CASTANEDA, EVARISTO