

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

D15776  
X/gts/hu

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - May 16, 2007

REINALDO E. RIVERA, J.P.  
ROBERT A. SPOLZINO  
STEVEN W. FISHER  
ROBERT A. LIFSON  
THOMAS A. DICKERSON, JJ.

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2006-00653

DECISION & ORDER

The People, etc., respondent,  
v David Ferrante, appellant.

(S.C.I. No. 1179/05)

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Joseph R. Faraguna, Sag Harbor, 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 (Braslow, J.), rendered December 27, 2005, convicting him of criminal sale of a controlled substance in the fifth degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant pleaded guilty on May 19, 2005, in response to a promised sentence of two years incarceration and one year post-release supervision. The promised sentence was subject to three conditions, one of which was that the defendant appear at his scheduled sentencing. The sentence date was scheduled for July 14, 2005. The defendant did not appear on that date and, when he did appear, on December 27, 2005, he was sentenced to a determinate sentence of 3½ years incarceration and two years post-release supervision.

The defendant's argument that the sentence should be vacated and that he should be permitted an opportunity to withdraw his plea is without merit. The defendant was provided with

October 16, 2007

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an adequate opportunity to explain his failure to appear on the sentence date. His explanation was insufficient to justify his default. Moreover, the sentence imposed was not excessive (*see People v Suite*, 90 AD2d 80).

RIVERA, J.P., SPOLZINO, FISHER, LIFSON and DICKERSON, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court