

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

D15940
O/gts

_____AD3d_____

Submitted - June 8, 2007

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
ANITA R. FLORIO
DANIEL D. ANGIOLILLO, JJ.

2006-03188

DECISION & ORDER

The People, etc., respondent,
v Juan Almanzar, appellant.

(Ind. No. 214/04)

Lynn W. L. Fahey, New York, N.Y. (Lisa Napoli of counsel), for appellant.

Daniel M. Donovan, Jr., District Attorney, Staten Island, N.Y. (Morrie I. Kleinbart
and Anne Crick of counsel), for respondent.

Appeal by the defendant from a resentencing of the Supreme Court, Richmond County (Rienzi, J.), imposed March 7, 2006, upon his conviction of criminal possession of a controlled substance in the second degree, upon his plea of guilty.

ORDERED that the resentencing is affirmed.

The defendant appeals from his resentencing upon his conviction which followed his plea of guilty to criminal possession of a controlled substance in the second degree, in satisfaction of a multi-count indictment that included A-I felonies. The defendant pleaded guilty in exchange for a promised sentence of seven years to life imprisonment as a second felony offender. The plea agreement anticipated a resentencing if it were determined that the defendant was eligible for such relief under the drug reform laws.

Thereafter, the defendant moved for resentencing under the provisions of the 2005 extension of the Drug Law Reform Act (L 2005, ch 643 §1). The defendant asserted that, since he had a good record while incarcerated, including favorable evaluations for his participation in educational and vocational programs, he should be entitled to the statutory minimum sentence of six

September 4, 2007

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years' imprisonment. The court granted the motion and imposed a determinate term of seven years' imprisonment (*see* Penal Law § 70.71 [3][b][ii]).

The resentence imposed was not excessive.

SPOLZINO, J.P., SANTUCCI, FLORIO and ANGIOLILLO, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court