

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

D15990  
G/gts

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

Submitted - June 1, 2007

ROBERT A. SPOLZINO, J.P.  
GABRIEL M. KRAUSMAN  
DANIEL D. ANGIOLILLO  
WILLIAM E. McCARTHY, JJ.

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2006-10416

DECISION & ORDER

The People, etc., respondent,  
v Brian Backus, appellant.

(S.C.I. No. 06-646)

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Mark Diamond, 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 from a judgment of the County Court, Orange County (De Rosa, J.), rendered November 1, 2006, convicting him of grand larceny in the fourth degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant voluntarily, knowingly, and intelligently waived his right to appeal as part of the plea agreement (*see People v Lopez*, 6 NY3d 248; *People v Callahan*, 80 NY2d 273; *People v Moissett*, 76 NY2d 909). The defendant's valid waiver encompasses the challenge to the legality of the procedure utilized in sentencing him as a second felony offender (*see People v Callahan, supra*). The defendant's valid waiver also encompasses any challenge to the sentence as being excessive (*see People v Lopez, supra*).

SPOLZINO, J.P., KRAUSMAN, ANGIOLILLO and McCARTHY, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court

August 7, 2007

PEOPLE v BACKUS, BRIAN