

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

D16031  
G/gts

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

Submitted - June 8, 2007

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

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2005-04944

DECISION & ORDER

The People, etc., respondent,  
v Dushon Smith, appellant.

(Ind. No. 8847/03)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Rhea A. Grob of counsel; Melissa J. Erwin on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Carroll, J.), rendered January 6, 2005, convicting him of robbery in the first degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that his plea of guilty was not voluntary or knowing because the Supreme Court failed to make further inquiry when his allocution raised the possibility of the existence of an affirmative defense to the crime of robbery in the first degree (*see* Penal Law § 160.15[4]) is unreserved for appellate review since the defendant did not move to withdraw his plea or to vacate the judgment on that ground (*see People v Toxey*, 86 NY2d 725; *People v Sandson*, 6 AD3d 632; *People v Gehy*, 220 AD2d 527). Moreover, since nothing in the allocution casts significant doubt on the defendant's guilt or otherwise calls into question the voluntariness of the plea, the narrow exception to the preservation rule (*see People v Lopez*, 71 NY2d 662) is inapplicable (*see People v Sandson, supra*).

August 21, 2007

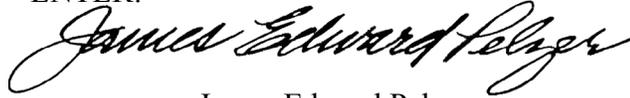
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The defendant's remaining contention is without merit.

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