

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

D16387  
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Argued - September 6, 2007

A. GAIL PRUDENTI, P.J.  
FRED T. SANTUCCI  
STEVEN W. FISHER  
DANIEL D. ANGIOLILLO, JJ.

2006-09107

DECISION & ORDER

The People, etc., respondent,  
v Bruce L. (Anonymous), appellant.

(Ind. No. 5453/05)

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Lynn W. L. Fahey, New York, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Diane R. Eisner of counsel; Brendan Price on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Holdman, J.), rendered September 18, 2006, convicting him of criminal possession of a weapon in the third degree, upon his plea of guilty, and sentencing him to a determinate term of six years imprisonment, followed by three years of post-release supervision.

ORDERED that the judgment is reversed, as a matter of discretion in the interest of justice, the conviction is deemed vacated and replaced with a finding that the defendant is a youthful offender (*see* CPL 720.20[3]), the sentence is reduced to a determinate term of one year imprisonment, and the matter is remitted to the Supreme Court, Kings County, for further proceedings in accordance with CPL 720.35

The defendant contends that the sentence imposed upon him was excessive, and the People agree. He also maintains that it was an improvident exercise of discretion for the sentencing court to refuse to accord him youthful offender status.

In view of the defendant's tender years, his ill health, and his complete lack of any juvenile or criminal record, we find that the sentence imposed was excessive to the extent indicated.

October 2, 2007

Page 1.

PEOPLE v L. (ANONYMOUS), BRUCE

Moreover, under all the circumstances of this case, including the existence of mitigating circumstances bearing directly on the manner in which the crime was committed (*see* CPL 720.10[3][i]), we find that “the interest of justice would be served by relieving the [defendant] from the onus of a criminal record” (CPL 720.20[1][a]; *see People v Nadja B.*, 23 AD3d 394).

The People’s remaining contention is without merit.

PRUDENTI, P.J., SANTUCCI, FISHER and ANGIOLILLO, JJ., concur.

ENTER:

A handwritten signature in cursive script, reading "James Edward Pelzer".

James Edward Pelzer  
Clerk of the Court