

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

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_____AD3d_____

Submitted - September 18, 2007

HOWARD MILLER, J.P.
DAVID S. RITTER
GLORIA GOLDSTEIN
THOMAS A. DICKERSON, JJ.

2004-05035

DECISION & ORDER

The People, etc., respondent,
v Tristan Pinheiro, appellant.

(Ind. No. 3669/03)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Jodi L. Mandel of counsel; Seth Zuckerman on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Walsh, J.), rendered April 20, 2004, convicting him of sexual abuse in the first degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the sentencing court should have adjudicated him a youthful offender is unpreserved for appellate review, since he failed to object or move to withdraw his plea on that ground (*see People v Thompson*, 16 AD3d 603; *People v Greene*, 13 AD3d 647; *People v Small*, 7 AD3d 819). In any event, under the circumstances of this case, the denial of youthful offender treatment was a provident exercise of discretion.

MILLER, J.P., RITTER, GOLDSTEIN and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

October 9, 2007

PEOPLE v PINHEIRO, TRISTAN