

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

D16616
X/kmg

_____AD3d_____

Submitted - October 3, 2007

STEPHEN G. CRANE, J.P.
DAVID S. RITTER
STEVEN W. FISHER
JOSEPH COVELLO
THOMAS A. DICKERSON, JJ.

2006-03163

DECISION & ORDER

The People, etc., respondent,
v Antoine Henderson, appellant.

(S.C.I. No. 9/2006)

Steven A. Feldman, Uniondale, N.Y., for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Bridget Rahilly Steller of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Hayes, J.), rendered March 23, 2006, convicting him of robbery in the third degree, upon his plea of guilty, and imposing an indeterminate sentence of one to three years imprisonment and restitution.

ORDERED that the judgment is modified, on the law, by vacating the sentence imposed thereon; as so modified, the judgment is affirmed, and the matter is remitted to the County Court, Dutchess County, for further proceedings consistent herewith.

Although a court is, of course, free to reserve in a plea bargain the right to order restitution, the guilty plea in this case was negotiated with terms that did not include restitution. Accordingly, at sentencing, the defendant should have been given an opportunity either to withdraw his plea or to accept the enhanced sentence of restitution and a prison sentence (*see People v Cisco*, 208 AD2d 643; *People v Cowan*, 168 AD2d 509; *People v Lopez*, 135 AD2d 739, 739-740). Since

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he was not afforded this opportunity, the matter is now remitted for that purpose.

CRANE, J.P., RITTER, FISHER, COVELLO and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court