

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

D17152
W/kmg

_____AD3d_____

Submitted - November 13, 2007

STEPHEN G. CRANE, J.P.
REINALDO E. RIVERA
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

2006-06948

DECISION & ORDER

The People, etc., respondent,
v John Holder, appellant.

(Ind. No. 6028/01)

Lynn W. L. Fahey, New York, N.Y. (Denise A. Corsi of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Solomon Neubort of counsel), for respondent.

Appeal by the defendant, by permission, from an order of the Supreme Court, Kings County (Knipel, J.), dated June 19, 2006, which denied his motion pursuant to CPL 440.20 to set aside so much of his sentence as allegedly imposed a period of post-release supervision.

ORDERED that the order is affirmed.

We conclude that the defendant's motion pursuant to CPL 440.20 was properly denied, but for reasons different from those relied upon by the Supreme Court (*see People v Noble*, 37 AD3d 622). At sentencing, the court explicitly stated that no period of post-release supervision was imposed and there is no reference to a term of post-release supervision in the commitment order (*cf. People v Hill*, _____NY3d_____ [Nov. 15, 2007]). Therefore, the sentence does not include a period of post-release supervision (*see Hill v United States ex rel. Wampler*, 298 US 460; *People ex rel. Gerard v Kralik*, 44 AD3d 804; *People v Duncan*, 42 AD3d 470, 471, *lv denied* _____NY3d_____ [Oct 29, 2007]; *People v Martinez*, 40 AD3d 1012, 1013; *People v Royster*, 40 AD3d 885, 886; *People v Brown*, 39 AD3d 659, 660; *People v Noble*, 37 AD3d at 622; *Earley v Murray*, 451

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F3d 71, *cert denied sub nom. Burhlre v Earley*, 127 S Ct 3014). Indeed, the People acknowledge, in their brief, that “defendant’s sentence did not at any time, and does not now, contain a period of post-release supervision.”

CRANE, J.P., RIVERA, ANGIOLILLO and DICKERSON, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court