

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

D17198
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_____AD3d_____

Submitted - November 14, 2007

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

2006-00385

DECISION & ORDER

The People, etc., respondent,
v Naquan Gray, appellant.

(Ind. No. 849-05)

Robert C. Mitchell, Riverhead, N.Y. (Alfred J. Cicale of counsel), for appellant, and appellant pro se.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Anne E. Oh of counsel; Kyle Pulis on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Suffolk County (Doyle, J.), rendered December 7, 2005, convicting him of gang assault in the first degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant pleaded guilty to gang assault in the first degree after a fight between his brother and another resulted in a fatal shooting. The defendant and two codefendants, who were at the scene to assist the brother, all discharged firearms during the fight. A bullet from the gun of a codefendant killed the victim.

The defendant argues that his sentence is excessive and that the court improvidently exercised its discretion in denying him youthful offender treatment. However, because the defendant received the sentence for which he expressly bargained, which did not include youthful offender treatment, he has no cause to complain on appeal (*see People v Wynn*, 40 AD3d 893, 894, *lv denied*

December 11, 2007

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9 NY3d 871; *People v Deale*, 29 AD3d 602, 603; *People v Kazepis*, 101 AD2d 816, 817). In any event, in light of the seriousness of the crime, the sentence imposed was not excessive. Further, the court did not improvidently exercise its discretion in denying the defendant youthful offender treatment (*see People v Demosthene*, 21 AD3d 384).

By pleading guilty, the defendant forfeited the claim, raised in his supplemental pro se brief, concerning a nonjurisdictional defect in the indictment (*see People v Purnell*, 22 AD3d 871).

The defendant's remaining contentions, raised in his supplemental pro se brief, are unpreserved for appellate review and, in any event, without merit.

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, flowing style.

James Edward Pelzer
Clerk of the Court