

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

D17345
C/hu

_____AD3d_____

Argued - November 26, 2007

HOWARD MILLER, J.P.
STEPHEN G. CRANE
MARK C. DILLON
RUTH C. BALKIN, JJ.

2006-08558

DECISION & ORDER

The People, etc., respondent,
v Bruce J. Etheridge, Jr., a/k/a
Bruce Etheridge, appellant.

(Ind. No. 05-00318)

Dickover, Donnelly, Donovan & Biagi, LLP, Goshen, N.Y. (Michael H. Donnelly and Robert N. Isseks, Middletown, N.Y., of counsel), for appellant.

David L. Darwin, County Attorney, Goshen, N.Y. (Matthew J. Nothnagle of counsel), for respondent.

Appeal by the defendant from an amended judgment of the County Court, Orange County (Riley, J.), rendered August 11, 2006, revoking a sentence of probation previously imposed by the same court (Rosenwasser, J.) upon a finding, after a hearing, that he violated a condition thereof, and imposing a term of imprisonment upon his previous conviction of rape in the third degree.

ORDERED that the amended judgment is affirmed.

The defendant's contention that the court's determination revoking his probation was not supported by sufficient evidence is without merit. Viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), we find that the testimony adduced at the hearing supports, by a preponderance of the evidence, the court's determination that the defendant committed the acts with which he was charged (*see CPL 410.70[3]*; *People v Rennie*, 190 AD2d 830).

December 18, 2007

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The defendant's remaining claims were waived by his written acceptance of the terms of his probation (*see People v Hale*, 93 NY2d 454, 463), and by his waiver of the right to appeal from his conviction of rape in the third degree (*see People v Callahan*, 80 NY2d 273, 281; *People v Kimbrough*, 25 AD3d 810, 810-811; *People v Gorovoy*, 309 AD2d 764; *but see People v Venable*, 16 AD3d 771), the validity of which he does not challenge on this appeal.

MILLER, J.P., CRANE, DILLON and BALKIN, 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