

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

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Y/hu

_____AD3d_____

Argued - November 20, 2007

REINALDO E. RIVERA, J.P.
ROBERT A. SPOLZINO
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2005-00871

DECISION & ORDER

The People, etc., respondent,
v Delroy Ricketts, appellant.

(Ind. No. 9160/00)

Lynn W. L. Fahey, New York, N.Y. (Erica Horwitz of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Camille O'Hara Gillespie, and Michael Tenenbaum of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Marrus, J.), rendered December 9, 2004, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

A criminal defendant has a constitutional and statutory right to be present at all material stages of the trial (*see People v Rolle*, 4 AD3d 542). A defendant, however, must provide an adequate record for determining whether he or she was wrongfully excluded from a material stage of the trial (*see People v Borzouye*, 265 AD2d 419; *People v Rodriguez*, 251 AD2d 603). Here, as the record fails to disclose when and for what duration, if at all, the defendant was asleep during the jury selection process, meaningful appellate review of this issue is precluded (*see People v Borzouye*, 265 AD2d 419; *People v Rodriguez*, 251 AD2d 603; *People v Vanegas*, 237 AD2d 469, 470).

The defendant's contention alleging ineffective assistance of counsel is without merit (*see People v Familia*, 37 AD3d 848; *People v Nakovics*, 144 AD2d 704).

January 29, 2008

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The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

RIVERA, J.P., SPOLZINO, CARNI and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court