

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

D17555  
C/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - November 28, 2007

WILLIAM F. MASTRO, J.P.  
FRED T. SANTUCCI  
MARK C. DILLON  
DANIEL D. ANGIOLILLO, JJ.

---

2007-03174

DECISION & ORDER

The People, etc., appellant,  
v Christopher B. Dashevsky, respondent.

(S.C.I. No. 1605-06)

---

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Grazia DiVincenzo of counsel),  
for appellant.

Robert C. Mitchell, Riverhead, N.Y. (James H. Miller III of counsel), for respondent.

Appeal by the People from an order of the Supreme Court, Suffolk County (Doyle, J.), dated March 13, 2007, which granted the defendant's motion to dismiss Suffolk County Superior Court Information No. 1605-06, charging him with attempted disseminating indecent material to minors in the first degree, attempted rape in the second degree, and attempted criminal sexual act in the second degree, and, in effect, to withdraw his plea of guilty.

ORDERED that the appeal from so much of the order as granted that branch of the defendant's motion which was, in effect, to withdraw his plea of guilty is dismissed; and it is further,

ORDERED that the order is reversed insofar as reviewed, on the law, that branch of the defendant's motion which was to dismiss Suffolk County Superior Court Information No. 1605-06 is denied, Suffolk County Superior Court Information No. 1605-06 is reinstated, and the matter is remitted to the Supreme Court, Suffolk County, for further proceedings consistent herewith.

On June 15, 2006, the defendant pleaded guilty to the first count of Suffolk County Superior Court Information No. 1605-06, attempted disseminating indecent material to minors in the first degree, in full satisfaction of that Superior Court Information. Prior to sentencing, the defendant moved to dismiss that Superior Court Information in light of this Court's decision and order in *People*

January 15, 2008

Page 1.

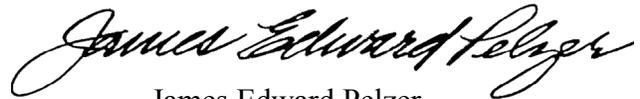
PEOPLE v DASHEVSKY, CHRISTOPHER B.

*v Kozlow* (31 AD3d 788), on the ground that his allocution was factually insufficient to establish that his Internet communications with an undercover police officer, whom he believed to be a minor, “depict[ed]” sexual conduct within the meaning of Penal Law § 235.22(1), since the Internet communications contained no visual sexual images (*see* Penal Law § 235.22[1]). The Court of Appeals subsequently reversed that decision and order, and held that the word “depict” is broad enough in meaning to cover a wide range of indecent materials, not merely visual or pictorial representations (*see People v Kozlow*, 8 NY3d 554, 560).

The People contend that in light of the Court of Appeals decision in *Kozlow*, the Superior Court Information and the defendant’s plea of guilty should be reinstated. While this Court lacks the authority to reinstate the plea, it may reinstate the Superior Court Information (*see People v Thompson*, 202 AD2d 456; *People v Reap*, 68 AD2d 964, 965). Accordingly, we reverse so much of the order as granted that branch of the defendant’s motion which was to dismiss Suffolk County Superior Court Information No. 1605-06 and reinstate the Superior Court Information.

MASTRO, J.P., SANTUCCI, DILLON and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court