

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

D17976  
X/kmg

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Submitted - January 10, 2008

ROBERT A. SPOLZINO, J.P.  
HOWARD MILLER  
MARK C. DILLON  
WILLIAM E. McCARTHY, JJ.

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2006-03267

DECISION & ORDER

The People, etc., respondent,  
v Larry Dathan, appellant.

(Ind. No. 3737/02)

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Lynn W. L. Fahey, New York, N.Y. (Steven R. Bernhard of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Jodi L. Mandel of counsel; Melissa J. Feldman on the brief), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Tomei, J.), dated March 22, 2006, which denied his motion for resentencing pursuant to the Drug Law Reform Act of 2005 (L 2005, ch 643) on his convictions of, inter alia, criminal sale of a controlled substance in the second degree (two counts), which sentence was originally imposed, upon a jury verdict, on August 13, 2003.

ORDERED that the order is affirmed.

Contrary to the defendant's contention, the Supreme Court properly denied his motion for resentencing under the Drug Law Reform Act of 2005 (L 2005, ch 643). Since the defendant was, at the time of his motion, less than three years from being eligible for release on parole (*see* L 2005, ch 643, § 1; Correction Law § 851[2]), he did not qualify for resentencing (*see People v McCurdy*, 46 AD3d 843; *People v Corley*, 45 AD3d 857; *People v Nolasco*, 37 AD3d 622; *People v Parris*, 35 AD3d 891; *People v Bautista*, 26 AD3d 230).

SPOLZINO, J.P., MILLER, DILLON and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

February 13, 2008

PEOPLE v DATHAN, LARRY