

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

D17987
X/kmg

_____AD3d_____

Submitted - January 16, 2008

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

2005-08168

DECISION & ORDER

The People, etc., respondent,
v Andre Purvis, appellant.

(Ind. No. 3831/01)

Lynn W. L. Fahey, New York, N.Y., for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano and Merri Turk Lasky of counsel; Lorrie A. Zinno on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Griffin, J.), rendered August 10, 2005, convicting him of assault in the first degree and criminal possession of a weapon in the fourth degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that he was denied the effective assistance of counsel when counsel failed to request a hearing with respect to the defendant's failure to complete a drug rehabilitation program as required by his plea agreement. The defendant's contention is without merit (*see Strickland v Washington*, 466 US 668; *People v McDonald*, 1 NY3d 109). The record shows that the defendant freely admitted to leaving the program without permission and against clinical advice, and his vague assertions about the "climate" of the program, without more, did not warrant a hearing (*see People v Valencia*, 3 NY3d 714; *cf. People v Jackson*, 272 AD2d 342). In any event, the record further shows that after the court had clearly explained to the defendant that it would

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afford him the opportunity for a hearing, the defendant voluntarily waived the opportunity.

MASTRO, J.P., FISHER, FLORIO, ANGIOLILLO 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