

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

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_____AD3d_____

Argued - January 22, 2008

A. GAIL PRUDENTI, P.J.
ROBERT A. LIFSON
JOSEPH COVELLO
RUTH C. BALKIN, JJ.

2005-03874

DECISION & ORDER

The People, etc., respondent,
v Hewlett Brewster, appellant.

(Ind. No. 2291/03)

Kent V. Moston, Hempstead, N.Y. (Jeremy L. Goldberg and David A. Bernstein of counsel), for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Robert A. Schwartz of counsel; Jason R. Richards on the brief), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Honorof, J.), rendered April 1, 2005, convicting him of burglary in the third degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing, pursuant to a stipulation in lieu of motions, of the suppression of physical evidence.

ORDERED that the judgment is affirmed.

There is no basis to disturb the hearing court's finding that the defendant voluntarily consented to give the police saliva and blood samples (*see People v Hay*, 37 AD3d 494). Accordingly, suppression was properly denied.

Upon the exercise of our factual review power (*see CPL 470.15[5]*), we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

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The defendant has failed to demonstrate that he was denied the effective assistance of counsel (*see People v Benevento*, 91 NY2d 708; *People v Baldi*, 54 NY2d 137). The arguments and objections which the defendant claims should have been asserted had little or no chance of success, and a review of the record in its entirety reveals that defense counsel provided meaningful representation (*see People v Caban*, 5 NY3d 143; *People v Stultz*, 2 NY3d 277; *People v Benevento*, 91 NY2d 708).

The court providently exercised its discretion in imposing the maximum sentence (*see People v Suitte*, 90 AD2d 80).

PRUDENTI, P.J., LIFSON, COVELLO 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