

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

D18101
Y/kmg

_____AD3d_____

Argued - January 18, 2008

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
HOWARD MILLER
THOMAS A. DICKERSON, JJ.

2005-09451

DECISION & ORDER

The People, etc., respondent,
v Tyrone Anderson, appellant.

(Ind. No. 5005/04)

Lynn W. L. Fahey, New York, N.Y. (Jonathan M. Kratter of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Victor Barall, and Tziyonah M. Langsam of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Starkey, J.), rendered September 19, 2005, convicting him of robbery in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that the court erred in discharging, sua sponte, certain prospective jurors based on their responses to questions regarding whether they or a relative had been arrested or convicted of a crime. The court properly excused those prospective jurors based on its own questioning which revealed, by their own admissions, that they could not be fair and impartial (*see People v Wynder*, 41 AD3d 209; *People v McGhee*, 4 AD3d 485). The defendant's remaining contention regarding jury selection is unpreserved for appellate review (*see* CPL 470.05[2]) and, in any event, is without merit (*see People v Johnson*, 94 NY2d 600).

The defendant's constitutional challenge to his adjudication as a persistent felony offender is without merit. Contrary to the defendant's contention, the procedure under which he was

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sentenced as a persistent felony offender did not violate either his Sixth Amendment or due process rights (*see* Penal Law § 70.10[2]; *People v Rivera* 5 NY3d 61, *cert denied* 546 US 984; *People v Jordan*, 21 AD3d 1039).

MASTRO, J.P., FLORIO, MILLER 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