

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

D18429
O/prt

_____AD3d_____

Submitted - October 3, 2007

ROBERT A. SPOLZINO, J.P.
PETER B. SKELOS
ROBERT A. LIFSON
WILLIAM E. McCARTHY, JJ.

2006-03252

DECISION & ORDER ON MOTION

The People, etc., respondent,
v Jair Lipscombe, appellant.

(Ind. No. 5442/03)

Motion by the assigned counsel for the appellant on an appeal from a judgment of the Supreme Court, Kings County, rendered March 21, 2006, which was determined by decision and order of this Court dated October 23, 2007, for leave to withdraw her application for leave to withdraw as counsel, and thereupon, for reargument of the appeal.

Upon the papers filed in support of the motion and the papers filed in relation thereto, it is

ORDERED that the motion is granted and the application by assigned counsel is deemed withdrawn, and upon reargument, the decision and order of this Court dated October 23, 2007 (*see People v Lipscombe*, 44 AD3d 967), is recalled and vacated, and the following decision and order is substituted therefor:

Cheryl Charles-Duval, Brooklyn, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Morgan J. Dennehy of counsel; Robert Ho on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Del Giudice, J.), rendered March 21, 2006, convicting him of criminal possession of a weapon in the third degree, upon his plea of guilty, and imposing sentence.

March 18, 2008

PEOPLE v LIPSCOMBE, JAIR

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ORDERED that the judgment is reversed, on the law, the plea is vacated, and the matter is remitted to the Supreme Court, Kings County, for further proceedings in accordance herewith.

At the plea proceeding, the defendant was not advised that he would be subject to a period of post-release supervision as part of an enhanced sentence if he failed to comply with the conditions of his plea. After the defendant failed to appear on the scheduled sentencing date, the Supreme Court imposed the maximum sentence plus three years post-release supervision. As the People correctly concede, the failure to advise the defendant of post-release supervision at the time of his plea requires reversal of his conviction (*see People v Louree*, 8 NY3d 541; *People v Pagan*, 43 AD3d 1086).

SPOLZINO, J.P., SKELOS, LIFSON and McCARTHY, 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