

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

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_____AD3d_____

Argued - March 6, 2008

ROBERT A. SPOLZINO, J.P.
HOWARD MILLER
JOSEPH COVELLO
RUTH C. BALKIN, JJ.

2006-10989

DECISION & ORDER

The People, etc., respondent,
v Willie Cook, appellant.

(Ind. No. 273/06)

Steven Banks, New York, N.Y. (Harold V. Ferguson, Jr., of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Solomon Neubort of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Holdman, J.), rendered November 6, 2006, convicting him of criminal possession of a weapon in the third degree, upon his plea of guilty, and imposing sentence.

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.

On appeal, the defendant challenges the validity of his plea on the ground that the Supreme Court failed to inform him that his sentence would include a period of postrelease supervision. Review of the record reveals that the court did inform the defendant of this condition at sentencing, but it failed to so inform him at the plea allocution. Under such circumstances, the defendant did not waive his challenge to the sufficiency to the plea allocution on direct appeal, despite the fact that he did not make a formal post-allocution motion to withdraw the plea or a motion to vacate the judgment of conviction (*see People v Louree*, 8 NY3d 541; *People v Pagan*, 43 AD3d 1086). Accordingly, as the People correctly concede, “the failure of a court to advise of postrelease

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supervision [at the time of the plea] requires reversal of the conviction” (*People v Catu*, 4 NY3d 242, 245; *see People v Pagan*, 43 AD3d at 1086).

In light of our determination, it is unnecessary to reach the defendant’s remaining contention.

SPOLZINO, J.P., MILLER, 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