

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

D18591
W/hu

_____AD3d_____

Argued - February 21, 2008

A. GAIL PRUDENTI, P.J.
HOWARD MILLER
MARK C. DILLON
WILLIAM E. McCARTHY, JJ.

2006-02791

DECISION & ORDER

The People, etc., respondent,
v Daniel Edell, appellant.

(Ind. No. 2612/00)

Kent V. Moston, Hempstead, N.Y. (Jeremy L. Goldberg and Argun M. Ulgen of counsel), for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Robert A. Schwartz, Valentina M. Tejera, and Jason P. Weinstein of counsel), for respondent.

Appeal by the defendant from an order of the County Court, Nassau County (Brown, J.), dated February 10, 2006, which denied his motion for resentencing pursuant to the Drug Law Reform Act of 2005 (L 2005, ch 643) on his conviction of criminal sale of a controlled substance in the second degree, which sentence was originally imposed, upon his plea of guilty, on June 21, 2001.

ORDERED that the order is affirmed.

The County Court properly denied the defendant's motion for resentencing under the Drug Law Reform Act of 2005 (L 2005, ch 643) (hereinafter the 2005 DLRA). Since the defendant was, at the time of his motion, less than three years from being eligible for release on parole (*see* L 2005, ch 643, § 1; Correction Law § 851[2]), he did not qualify for resentencing (*see People v Dathan*, _____AD3d_____, 2008 NY Slip Op 01369 [2d Dept 2008]; *People v McCurdy*, 46 AD3d 843, *lv denied* 9 NY3d 1036; *People v Corley*, 45 AD3d 857; *People v Nolasco*, 37 AD3d 622; *People v Parris*, 35 AD3d 891; *People v Bautista*, 26 AD3d 230).

March 25, 2008

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Contrary to the defendant's further contention, the 2005 DLRA does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The statute's disparate treatment of inmates with different parole eligibility dates "is rationally related to the achievement of the valid state objective of ameliorating the conditions of those A-II offenders facing the longest prison time" (*People v Bautista*, 26 AD3d at 230; see *People v Smith*, 45 AD3d 1478, 1480).

PRUDENTI, P.J., MILLER, DILLON and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court