

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

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_____AD3d_____

Submitted - March 3, 2008

PETER B. SKELOS, J.P.
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL
ARIEL E. BELEN, JJ.

2006-07185

DECISION & ORDER

The People, etc., respondent,
v Jorge Rodriguez, a/k/a George Rodriguez, appellant.

(Ind. No. 05-00338)

Arlene Lewis, Blauvelt, N.Y., for appellant.

Thomas P. Zugibe, District Attorney, New City, N.Y. (Carrie A. Ciganek of counsel),
for respondent.

Appeal by the defendant, as limited by his brief, from a sentence of the County Court, Rockland County (Nelson, J.), imposed July 12, 2006, upon his conviction of burglary in the second degree and criminal possession of stolen property in the fifth degree, upon a jury verdict.

ORDERED that the sentence is affirmed.

The County Court properly found the defendant to be a persistent violent felony offender based on his 1985 and 1996 convictions. The defendant is estopped from challenging his 1985 conviction because he did not challenge its constitutionality in 1996, when it served as the predicate for his sentencing as a second violent felony offender (*see* CPL 400.15[8]; *People v Adelman*, 36 AD3d 926, 928; *People v Mastropietro*, 198 AD2d 443, 443-444). With respect to the 1996 conviction, the defendant contends that it cannot serve as a predicate because he was not advised that his guilty plea would subject him to mandatory, enhanced punishment upon his conviction of another violent felony. This contention is without merit. The possibility of enhanced punishment for a crime that may be committed in the future is a collateral consequence of the plea, and the court has no duty to inform the defendant of such a consequence (*see People v Ford*, 86 NY2d 397, 403; *People v McGrath*, 43 NY2d 803, 804; *People v Depeyster*, 115 AD2d 613).

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The defendant's remaining contentions are without merit.

SKELOS, J.P., ANGIOLILLO, LEVENTHAL and BELEN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court