

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

D18828
Y/prt

_____AD3d_____

Submitted - March 12, 2008

ROBERT A. SPOLZINO, J.P.
DAVID S. RITTER
MARK C. DILLON
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2006-02111

DECISION & ORDER

The People, etc., respondent,
v Patrick Kelly, appellant.

(Ind. No. 1789/04)

Robert C. Mitchell, Riverhead, N.Y. (Alfred J. Cicale of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Ronnie Jane Lamm of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Crecca, J.), rendered April 4, 2005, convicting him of robbery in the first degree (two counts) and robbery in the second degree (two counts), upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that his plea of guilty was not voluntary or knowing is unpreserved for appellate review, since he did not move to withdraw his plea or to vacate the judgment on that ground (*see People v Toxey*, 86 NY2d 725; *People v Fecu*, 38 AD3d 565; *People v Huchital*, 22 AD3d 681). The narrow exception to the preservation rule (*see People v Lopez*, 71 NY2d 662) is inapplicable here since the defendant unequivocally admitted his guilt at the plea allocution and made no statement casting doubt upon his guilt or otherwise calling into question the voluntariness of the plea (*see People v Smith*, 43 AD3d 474; *People v Sandson*, 6 AD3d 632). The statement attributed to the defendant in the presentence report did not obligate the court to conduct a sua sponte inquiry into the basis for the plea (*see People v Jones*, 41 AD3d 509, 510; *People v Bonilla*, 299 AD2d 934, 935; *People v Pantoja*, 281 AD2d 245, 246).

April 15, 2008

Page 1.

PEOPLE v KELLY, PATRICK

The defendant's remaining contention is without merit.

SPOLZINO, J.P., RITTER, DILLON, BALKIN and LEVENTHAL, 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