

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

D18968  
C/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - March 26, 2008

REINALDO E. RIVERA, J.P.  
ROBERT A. LIFSON  
HOWARD MILLER  
EDWARD D. CARNI  
RANDALL T. ENG, JJ.

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2006-07795  
2007-02307

DECISION & ORDER

The People, etc., respondent,  
v Barry Pratcher, appellant.

(Ind. Nos. 128B-06, 739A-06)

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

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Marion M. Tang of counsel),  
for respondent.

Appeal by the defendant from two judgments of the Supreme Court, Suffolk County (Mullen, J.), both rendered June 28, 2006, convicting him of robbery in the first degree under Suffolk County Indictment No. 128B-06 and robbery in the second degree (three counts) under Suffolk County Indictment No. 739A-06, upon his pleas of guilty, and imposing sentences.

ORDERED that the judgments are affirmed.

The defendant argues that his plea allocution was factually insufficient to establish the crimes of robbery in the second degree under Indictment No. 739A-06. However, as the defendant failed to move to withdraw his plea prior to sentencing he has not preserved for appellate review the issue of the sufficiency of the plea allocution (*see* CPL 470.05[2]; *People v Toxey*, 86 NY2d 725, 726; *People v Elcine*, 43 AD3d 1176, 1177; *People v Swanton*, 27 AD3d 591; *People v Huchital*, 22 AD3d 681), and this case does not fall within the narrow exception to the preservation rule (*see People v Lopez*, 71 NY2d 662, 666). In any event, “even if the defendant’s allocution did not establish the essential elements of the crime to which he pleaded guilty, it would not require vacatur of his plea since there is no suggestion in the record that the plea was improvident or baseless”

April 22, 2008

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(*People v Donigan*, 20 AD3d 487, quoting *People v Duff*, 158 AD2d 711, 711; see *People v Seeber*, 4 NY3d 780, 781; *People v Toxy*, 86 NY2d 725, 726; *People v Guerrero*, 307 AD2d 935, 936; *People v Winbush*, 199 AD2d 447, 448).

The sentence imposed for robbery in the first degree was not excessive (see *People v Suitte*, 90 AD2d 80).

RIVERA, J.P., LIFSON, MILLER, CARNI and ENG, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court