

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

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Y/hu

_____AD3d_____

Argued - March 25, 2008

DAVID S. RITTER, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY, JJ.

2005-10505
2005-11706

DECISION & ORDER

The People, etc., respondent,
v Tully Hyman, appellant.

(Ind. No. 1787/00)

Lynn W. L. Fahey, New York, N.Y. (John Gemmill of counsel), for appellant, and appellant pro se.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Johnnette Traill, and Christopher Barnett of counsel), for respondent.

Appeals by the defendant (1) from an order of the Supreme Court, Queens County (Eng. J.), dated July 1, 2005, which, without a hearing, denied his pro se motion pursuant to CPL 440.30(1-a) for forensic DNA testing of certain evidence recovered by the police, and (2), as limited by his brief, from so much of an order of the same court dated July 15, 2005, as, upon reargument, adhered to the original determination.

ORDERED that the appeal from the order dated July 1, 2005, is dismissed, as that order was superseded by the order dated July 15, 2005, made upon reargument; and it is further,

ORDERED that the order dated July 15, 2005, is affirmed insofar as appealed from.

May 6, 2008

PEOPLE v HYMAN, TULLY

Page 1.

The Supreme Court properly denied the defendant's motion pursuant to CPL 440.30(1-a) for forensic DNA testing of evidence. The defendant failed to make a sufficient showing that, if DNA test results had been admitted at the trial resulting in the judgment, there is a reasonable probability that the verdict would have been more favorable to him (*see People v Williams*, 47 AD3d 648; *People v Simpson*, 35 AD3d 901).

The defendant's contention, raised in his supplemental pro se brief, concerning the legal sufficiency of the evidence supporting his convictions, is not properly before this Court (*cf.* CPL 440.10[2][a]), and, in any event, is without merit (*see People v Hyman*, 15 AD3d 417). The defendant's remaining contentions raised in his supplemental pro se brief are unpreserved for appellate review (*see* CPL 470.05[2]), and, in any event, without merit.

RITTER, J.P., COVELLO, ANGIOLILLO and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court