

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

D19117  
X/kmg

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

Submitted - January 30, 2008

REINALDO E. RIVERA, J.P.  
ROBERT A. LIFSON  
DAVID S. RITTER  
EDWARD D. CARNI, JJ.

2006-08905

DECISION & ORDER

The People, etc., respondent,  
v Jean Luc Joseph, appellant.

(Ind. No. 736/06)

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Lynn W. L. Fahey, New York, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Jodi L. Mandel of counsel; Rami A. Yomtov on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Holdman, J.), rendered August 17, 2006, convicting him of criminal possession of a weapon in the third degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's purported waiver of his right to appeal from his sentence cannot be considered knowing, voluntary, and intelligent (*see People v Warde*, 45 AD3d 879; *People v Sheppard*, 29 AD3d 829; *People v Henry*, 29 AD3d 820). However, since the defendant pleaded guilty with the understanding that he would receive the sentence that was thereafter imposed, which did not include youthful offender treatment, he has no cause to complain on appeal (*see People v Gray*, 46 AD3d 703; *People v Sharlow*, 12 AD3d 724, 726; *People v Kazepis*, 101 AD2d 816). The Supreme Court properly exercised its discretion in declining to sentence the defendant as a youthful offender since the defendant was convicted of an armed felony and there were no mitigating

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circumstances attendant to the commission of the crime (*see* CPL 720.10[2][a][ii]; CPL 720.10[3][i]; *People v Thomas*, 206 AD2d 708, 709).

RIVERA, J.P., LIFSON, RITTER and CARNI, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court