

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

D19158
O/kmg

_____AD3d_____

Submitted - April 9, 2008

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

2006-02324

DECISION & ORDER

The People, etc., respondent,
v Santos Barahona, appellant.

(Ind. No. 05-449)

Tully, Rinckey & Associates, PLLC, Albany, N.Y. (Matthew B. Tully of counsel),
for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (David R. Huey of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County
(DeRosa, J.), rendered December 9, 2005, convicting him of attempted assault in the first degree,
upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contentions, the County Court's review of the presentence
report provided a sufficient basis for the court to depart from the original sentencing promise (*see*
People v Schultz, 73 NY2d 757; *People v Wood*, 207 AD2d 1001; *People v Richards*, 158 AD2d
627). Since the court placed its reasons for departing from the original promise on the record, and
the defendant was given an opportunity to withdraw his plea, which he declined, he was not entitled
to specific performance of the original sentencing agreement (*see People v Jones*, 287 AD2d 741).

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

ENTER:


James Edward Pelzer
Clerk of the Court

May 6, 2008

PEOPLE v BARAHONA, SANTOS