

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

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Submitted - April 17, 2008

ROBERT A. SPOLZINO, J.P.
EDWARD D. CARNI
THOMAS A. DICKERSON
RANDALL T. ENG, JJ.

2005-03416

DECISION & ORDER

The People, etc., respondent,
v Rafael Bordenave, appellant.

(Ind. No. 80-00309)

Mark Diamond, New York, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Richard L. Hecht of counsel),
for respondent.

Appeal by the defendant from an order of the County Court, Westchester County (Alessandro, J.), entered March 10, 2005, which denied his motion pursuant to the Drug Law Reform Act of 2004 (L 2004, ch 738, § 23) for resentencing upon his conviction of criminal possession of a controlled substance in the second degree, which sentence was originally imposed, upon his plea of guilty, on June 7, 1983.

ORDERED that the order is affirmed.

The defendant was convicted in 1983 of a Class A-II drug felony and sentenced to a term of imprisonment of eight years to life. He moved in January 2005 for resentencing pursuant to the Drug Law Reform Act of 2004 (L 2004, ch 738, § 23) (hereinafter the 2004 DLRA). His motion was correctly denied because only certain persons convicted of A-I drug felonies were permitted to

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apply for resentencing under the 2004 DLRA. The defendant did not fall within that class of people.

SPOLZINO, J.P., CARNI, DICKERSON and ENG, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court