

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

D19411
W/kmg

_____AD3d_____

Submitted - April 15, 2008

ANITA R. FLORIO, J.P.
HOWARD MILLER
MARK C. DILLON
WILLIAM E. McCARTHY, JJ.

2005-11067

DECISION & ORDER

The People, etc., respondent,
v Jose A. Rodriguez, appellant.

(Ind. No. 8911/03)

Steven Banks, New York, N.Y. (Ellen Dille of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Sholom J. Twersky, and O'Melveny & Myers LLP [B. Andrew Bednark] of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Starkey, J.), rendered November 7, 2005, convicting him of robbery in the second degree, sexual abuse in the first degree, robbery in the third degree, assault in the third degree, and criminal possession of a weapon in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the Supreme Court's *Sandoval* ruling (*see People v Sandoval*, 34 NY2d 371) deprived him of a fair trial is without merit. The court properly weighed the probative value of the defendant's prior offenses on the issue of his credibility against the possible prejudice to him, and reached an appropriate compromise ruling (*see People v Fotiou*, 39 AD3d 877; *People v Lopez*, 37 AD3d 496; *People v McLaurin*, 33 AD3d 819, 820; *People v Singletary*, 116 AD2d 604).

The defendant's contention that the persistent violent felony offender sentencing scheme under Penal Law § 70.08 violates the principles announced in *Apprendi v New Jersey* (530

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US 466) is unpreserved for appellate review (*see People v Smith*, 238 AD2d 451, 452), and in any event, is without merit (*see People v Leon*, 10 NY3d 122; *People v Rivera*, 5 NY3d 61, *cert denied* 546 US 984; *People v Rosen*, 96 NY2d 329, *cert denied* 534 US 899).

FLORIO, J.P., MILLER, DILLON and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court