

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

D19591  
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\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - May 15, 2008

ROBERT A. LIFSON, J.P.  
ANITA R. FLORIO  
EDWARD D. CARNI  
ARIEL E. BELEN, JJ.

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2006-04196

DECISION & ORDER

The People, etc., respondent,  
v Kenneth Ross, appellant.

(Ind. No. 8121/03)

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Lynn W. L. Fahey, New York, N.Y. (David P. Greenberg of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Amy Appelbaum of counsel; Sabrina Thanse on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Starkey, J.), rendered November 13, 2005, convicting him of murder in the first degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that his plea of guilty was not knowing and voluntary is unpreserved for appellate review, since he did not move to withdraw his plea of guilty (*see People v Rodriguez*, \_\_\_\_\_AD3d\_\_\_\_\_, 2008 NY Slip Op 04892 [2d Dept 2008]). Moreover, this case does not present a "rare exception" to the preservation requirement, as the defendant's recitation of the facts underlying the crime to which he pleaded guilty did not clearly cast doubt on his guilt or otherwise call into question the voluntariness of his plea (*see People v Lopez*, 71 NY2d 662).

In any event, the record of the plea proceeding establishes that the plea was knowing and voluntary, and that there was no need for further inquiry concerning the existence of the possibility of the affirmative defenses of extreme emotional disturbance or intoxication (*see People v Burgess*, 21 AD3d 904; *People v Washington*, 186 AD2d 834; *People v Maida*, 147 AD2d 711).

LIFSON, J.P., FLORIO, CARNI and BELEN, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court