

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

D19627
G/prt

_____AD3d_____

Submitted - May 16, 2008

ROBERT A. SPOLZINO, J.P.
JOSEPH COVELLO
THOMAS A. DICKERSON
RANDALL T. ENG, JJ.

2006-02108

DECISION & ORDER

The People, etc., respondent,
v Stephen Ruffino, appellant.

(Ind. No. 04-07002)

Peter A. Sell, New York, N.Y., for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (Luke E. Bovill and Andrew R. Kass of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (De Rosa, J.), rendered February 15, 2006, revoking a sentence of probation previously imposed by the County Court, Nassau County (Brown, J.), upon a finding that he violated a condition thereof, upon his admission, and imposing a sentence of imprisonment upon his previous conviction of driving while intoxicated.

ORDERED that the judgment is affirmed.

The defendant's contention that the County Court improvidently exercised its discretion in resentencing him on the violation of probation without obtaining an updated presentence report is not preserved for appellate review (*see People v Rogers*, 45 AD3d 786, 787; *People v Ramirez*, 29 AD3d 1022; *People v Gambichler*, 25 AD3d 722; *People v Freeman*, 2 AD3d 648, 649; *People v Segar*, 295 AD2d 628, 629; *People v Pierre-Paul*, 289 AD2d 262; *People v Viruet*, 288 AD2d 407) and, in any event, is without merit (*see People v Kuey*, 83 NY2d 278; *People v Fernandez*, 7 AD3d 886; *People v Ortega*, 1 AD3d 533; *People v Viruet*, 288 AD2d at 407).

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The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

SPOLZINO, J.P., COVELLO, DICKERSON and ENG, 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