

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

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_____AD3d_____

Submitted - May 16, 2008

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

2005-11096

DECISION & ORDER

The People, etc., respondent,
v Eleutherius Auguste, appellant.

(Ind. No. 11195/99)

Lynn W. L. Fahey, New York, N.Y., appellant, and appellant pro se.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Nicoletta J. Caferri, and Ellen C. Abbot of counsel), for respondent.

Appeal by the defendant from a resentence of the Supreme Court, Queens County (Buchter, J.), imposed October 18, 2005, after a hearing, upon his conviction of criminal possession of a controlled substance in the first degree, upon a jury verdict.

ORDERED that the resentence is affirmed.

The defendant moved for resentencing under the Drug Law Reform Act of 2004 (*see* L 2004, ch 738, § 23). The Supreme Court granted the motion and imposed a determinate term of 15 years' imprisonment with 5 years post-release supervision (*see* Penal Law §§ 70.71[2][b][i], 70.45[2]).

The resentence imposed by the Supreme Court was not excessive (*see People v Delgado*, 80 NY2d 780; *People v Suite*, 90 AD2d 80). The fact that the defendant's resentence was greater than one the People would have agreed to had he elected to comply with the terms of the

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resentence negotiation does not establish his entitlement to a lesser sentence (*cf. People v Pena*, 50 NY2d 400, 411-412, *cert denied* 449 US 1087; *People v Garcia*, 46 AD3d 573, 573-574).

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 with a large initial "J".

James Edward Pelzer
Clerk of the Court