

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

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Submitted - May 27, 2008

A. GAIL PRUDENTI, P.J.
PETER B. SKELOS
JOSEPH COVELLO
RUTH C. BALKIN, JJ.

2001-04001

DECISION & ORDER

The People, etc., respondent,
v Eric Baez, appellant.

(Ind. No. 700/99)

Patrick Michael Megaro, Hempstead, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Judith R. Sternberg and Laurie K. Spinella of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Honorof, J.), rendered April 5, 2001, convicting him of murder in the second degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

By withdrawing all motions, pending and undecided, the defendant waived his right to seek appellate review of the suppression ruling (*see People v Jones*, 288 AD2d 322; *People v Capone*, 229 AD2d 445, 446; *People v Gary*, 179 AD2d 821, 822). Furthermore, considering the totality of the evidence at the suppression hearing, the law, and the circumstances of the case, the withdrawal of the motions did not constitute ineffective assistance of counsel (*see People v Benevento*, 91 NY2d 708, 711).

The defendant's contention that the sentencing court improperly considered certain information when imposing sentence is unpreserved for appellate review (*see CPL 470.05[2]*; *People v Callahan*, 80 NY2d 273, 281; *People v Butler*, 10 AD3d 368) and, in any event, is without merit (*see People v Hansen*, 99 NY2d 339, 345-346; *People v Olds*, 24 AD3d 571). Moreover, the

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defendant's contention that the court improperly failed to conduct a hearing to determine the amount of restitution is also unpreserved for appellate review (*see* CPL 470.05[2]; *People v Passalacqua*, 43 AD3d 964; *People v Allen*, 305 AD2d 421) and, in any event, is without merit (*see People v Charles*, 309 AD2d 873, 874; *People v Stubbs*, 281 AD2d 498, 499).

PRUDENTI, P.J., SKELOS, COVELLO and BALKIN, 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