

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

D19762  
X/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - May 23, 2008

FRED T. SANTUCCI, J.P.  
DANIEL D. ANGIOLILLO  
RANDALL T. ENG  
CHERYL E. CHAMBERS, JJ.

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2007-03427

DECISION & ORDER

The People, etc., respondent,  
v Michael Curry, appellant.

(Ind. No. 04-00169)

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Arlene Lewis, Blauvelt, N.Y., for appellant.

Thomas P. Zugibe, District Attorney, New City, N.Y. (Carrie A. Ciganek of counsel),  
for respondent.

Appeal by the defendant from an order of the County Court, Rockland County (Bartlett, J.), entered June 29, 2006, which, after a hearing, denied his motion for resentencing pursuant to the Drug Law Reform Act of 2004 (L 2004, ch 738, § 23) on his conviction of criminal possession of a controlled substance in the first degree, which sentence was originally imposed, upon a jury verdict, on January 4, 2005.

ORDERED that the order is affirmed.

Contrary to the defendant's contention, the County Court providently exercised its discretion in denying his motion for resentencing pursuant to the Drug Law Reform Act of 2004 (L 2004, ch 738, § 23) on "substantial justice" grounds. The instant conviction, which entailed the possession of a significant amount of crack cocaine, represented the defendant's fourth drug-related felony offense. Further, three of the offenses were committed while the defendant was either on parole or probation. The court considered the defendant's evidence of rehabilitation while incarcerated and found that it did not outweigh the seriousness of the instant offense and his lengthy criminal history (*see People v Salcedo*, 40 AD3d 356). Under the circumstances, "substantial justice" dictated that the motion be denied (L 2004, ch 738, § 23; *see People v Aguirre*, 47 AD3d

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489; *People v Batista*, 45 AD3d 396; *People v Gonzalez*, 29 AD3d 400; cf. *People v Beasley*, 47 AD3d 639, 641).

SANTUCCI, J.P., ANGIOLILLO, ENG and CHAMBERS, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court