

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

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_____AD3d_____

Submitted - June 4, 2008

STEVEN W. FISHER, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
ARIEL E. BELEN, JJ.

2006-03431

DECISION & ORDER

The People, etc., respondent,
v Jose Vargas, appellant.

(Ind. No. 1972-04)

Joseph R. Faraguna, Sag Harbor, N.Y., for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Marcia R. Kucera of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Hudson, J.), rendered January 9, 2006, convicting him of murder in the second degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's valid waiver of the right to appeal, as part of his plea agreement, precludes appellate review of his claims that the negotiated sentence imposed was excessive (*see People v Holman*, 89 NY2d 876; *People v Seaberg*, 74 NY2d 1), and that he was denied the effective assistance of counsel, except to the extent that it affected the voluntariness of his plea (*see People v Morrow*, 48 AD3d 704, 705; *People v Dixon*, 41 AD3d 861; *People v Porter*, 268 AD2d 603). To the extent the defendant contends that his counsel was ineffective such that the voluntariness of his

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plea was affected, this contention involves matter dehors the record, which may not be reviewed on direct appeal (*see People v Williams*, 36 AD3d 839, 840; *People v Lopez*, 34 AD3d 599; *People v Petteway*, 22 AD3d 772).

FISHER, J.P., FLORIO, ANGIOLILLO, DICKERSON and BELEN, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court