

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

D19852
C/prt

_____AD3d_____

Submitted - February 29, 2008

A. GAIL PRUDENTI, P.J.
ROBERT A. SPOLZINO
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
RANDALL T. ENG, JJ.

2006-06304

DECISION & ORDER

The People, etc., respondent,
v Johannes Gonzalez, appellant.

(Ind. No. 02-00957)

John R. Lewis, Sleepy Hollow, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Maria I. Wager, Richard Longworth Hecht, and Anthony J. Servino of counsel), for respondent.

Appeal by the defendant from an order of the County Court, Westchester County (Zambelli, J.), entered June 12, 2006, which, after a hearing, inter alia, specified and informed the defendant that the court would impose a determinate sentence of imprisonment of 15 years in the event of a resentence pursuant to the Drug Law Reform Act of 2004 (L 2004, ch 738, § 23).

ORDERED that the order is affirmed, and the matter is remitted to the County Court, Westchester County, to afford the defendant an opportunity to withdraw his application for resentencing before any resentence is imposed.

Contrary to the People's contention, the defendant did not waive his right to challenge the proposed resentence as excessive (*see People v Schreter*, 50 AD3d 930; *People v Love*, 46 AD3d 919, *lv denied* 10 NY3d 842). However, taking into account all of the relevant circumstances (*see People v Beasley*, 47 AD3d 639), the proposed resentence is not excessive (*see People v Suite*, 90 AD2d 80).

July 1, 2008

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Pursuant to the Drug Law Reform Act of 2004 (L 2004, ch 738, § 23), we remit this matter to the County Court, Westchester County, to afford the defendant an opportunity to withdraw his application for resentencing before any resentence is imposed.

PRUDENTI, P.J., SPOLZINO, SANTUCCI, ANGIOLILLO and ENG, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court