

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

D19923
C/kmg

_____AD3d_____

Submitted - June 4, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. LIFSON
HOWARD MILLER
EDWARD D. CARNI
RANDALL T. ENG, JJ.

2006-09743

DECISION & ORDER

The People, etc., respondent,
v David Chisholm, appellant.

(Ind. No. 1493N/06)

Leslie W. Rubin, Floral Park, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Lauren Del Giorno of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Berkowitz, J.), rendered February 9, 2007, convicting him of burglary in the second degree (four counts), attempted burglary in the second degree, and criminal mischief in the fourth degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant was not entitled to have the sentencing court direct that he be enrolled in a comprehensive alcohol and substance abuse treatment program while incarcerated, since he was not convicted of a controlled substance or marijuana offense, as required by the statute permitting such placement in the sentencing court's discretion (*see* Penal Law § 60.04[6]; *People v Colt*, 39 AD3d 770). We reject the defendant's contention that the County Court nevertheless had the discretion to direct such an enrollment, absent legislative authorization therefor.

There are no circumstances present in this case which would warrant disturbing the

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sentence imposed, which was not excessive (*see People v Suitte*, 90 AD2d 80).

RIVERA, J.P., LIFSON, MILLER, CARNI and ENG, 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