

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

D20001
X/kmg

_____AD3d_____

Argued - June 12, 2008

ROBERT A. SPOLZINO, J.P.
STEVEN W. FISHER
EDWARD D. CARNI
THOMAS A. DICKERSON, JJ.

2007-06178

DECISION & ORDER

The People, etc., respondent,
v Derrick McCarthy, appellant.

(Ind. No. 1816/04)

Sandback, Birnbaum & Michelen, Mineola, N.Y. (Oscar Michelen of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Ellen C. Abbot, and Rebecca Kramer of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Eng, J.), rendered June 19, 2007, convicting him of manslaughter in the first degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment if affirmed.

The defendant voluntarily, knowingly, and intelligently entered his plea of guilty (*see People v Fiumefreddo*, 82 NY2d 536, 543-547; *People v Sioleski*, 21 AD3d 501, 502; *People v Leo*, 255 AD2d 458, 459) and waived his right to appeal as part of his plea agreement (*see People v Kemp*, 94 NY2d 831, 833; *People v Ciatto*, 290 AD2d 560), precluding review of his challenge to the factual sufficiency of his plea allocution (*see People v Mydosh*, 27 AD3d 580; *People v Curras*, 1 AD3d 445, 446; *People v Green*, 200 AD2d 687).

SPOLZINO, J.P., FISHER, CARNI and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

July 15, 2008

PEOPLE v McCARTHY, DERRICK