

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

D20103
O/prt

_____AD3d_____

Submitted - June 10, 2008

DAVID S. RITTER, J.P.
HOWARD MILLER
MARK C. DILLON
WILLIAM E. McCARTHY, JJ.

2006-09283

DECISION & ORDER

The People, etc., respondent,
v Rance Smith, appellant.

(Ind. No. 685/05)

Michael O'Brien, Syosset, N.Y., for appellant, and appellant pro se.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Robert A. Schwartz and Sarah Spatt of counsel), for respondent.

Appeal by the defendant from an order of the County Court, Nassau County (Brown, J.), dated June 22, 2006, which denied his motion for resentencing pursuant to the Drug Law Reform Act of 2004 (L 2004, ch 738).

ORDERED that the order is affirmed.

The defendant committed several crimes, none of which exceeded the grade of a class "B" felony, before the effective date of the Drug Law Reform Act of 2004 (L 2004, ch 738 [enacted December 14, 2004 and effective January 13, 2005]) and therefore may not properly be resentenced pursuant to the ameliorative sentencing provisions of that enactment (*see* L 2004, ch 738, § 41[d-1]; *People v Utsey*, 7 NY3d 398; *see also* *People v Carpenter*, 51 AD3d 1149; *People v Zamor*, 33 AD3d 827; *People v Walker*, 26 AD3d 676; *People v Nelson*, 21 AD3d 861, *lv granted* 6 NY3d 757, *affd* 7 NY3d 398; *People v Pauly*, 21 AD3d 595).

The defendant's contention, raised in his supplemental pro se brief, that his trial counsel was ineffective due to his alleged failure to inform the defendant in writing of his right to appeal from the judgment entered upon his underlying conviction (*see* 22 NYCRR 671.3[a]), is not properly before this Court in the context of this appeal.

September 2, 2008

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The defendant's remaining contentions, including those raised in his supplemental pro se brief, are without merit.

RITTER, J.P., MILLER, DILLON and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court