

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

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Submitted - June 10, 2008

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

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2007-03560

DECISION & ORDER

The People, etc., respondent,  
v Geno Gallo, appellant.

(Ind. No. 06-00844)

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Michael G. Paul, New City, N.Y., for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (David R. Huey of counsel),  
for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (DeRosa, J.), rendered April 9, 2007, convicting him of criminal sale of a controlled substance in the third degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant argues that he was denied the effective assistance of counsel. However, the defendant received an advantageous plea, and nothing in the record casts doubt on the apparent effectiveness of counsel (*see People v Ford*, 86 NY2d 397; *People v Boodhoo*, 191 AD2d 448; *see generally People v Turner*, 5 NY3d 476; *People v Caban*, 5 NY3d 143). In reaching this determination, we have not reviewed the defendant's contention that he was denied effective assistance of counsel by a lack of zealous advocacy at his sentencing, as review of that contention is precluded by his valid waiver of his right to appeal (*see People v Perez*, 51 AD3d 1042; *People v Luster*, 45 AD3d 866). Further, we have not reviewed his contention that his attorney failed to adequately investigate, prepare, and discuss the case, as that contention is based on matter dehors the record, which cannot be reviewed on direct appeal (*see People v Morrison*, 51 AD3d 1041).

The defendant's valid waiver of his right to appeal precludes review of his challenge to the sentence as excessive (*see People v Lopez*, 6 NY3d 248; *People v Perez*, 51 AD3d 1042).

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