

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

D20146
Y/hu

_____AD3d_____

Submitted - June 13, 2008

PETER B. SKELOS, J.P.
JOSEPH COVELLO
JOHN M. LEVENTHAL
ARIEL E. BELEN, JJ.

2006-08899
2006-08901

DECISION & ORDER

The People, etc., respondent,
v Rudy Garcia Cruz, a/k/a Ruben Santos, appellant.

(Ind. Nos. 13830/92, 600/93)

Steven Banks, New York, N.Y. (Harold V. Ferguson, Jr., of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Thomas M. Ross of counsel), for respondent.

Appeals by the defendant from two judgments of the Supreme Court, Kings County (Brennan, J.), both rendered August 15, 2006, convicting him of criminal sale of a controlled substance in the third degree and criminal possession of a controlled substance in the seventh degree under Indictment No. 13830/92, and criminal sale of a controlled substance in the third degree and criminal possession of a controlled substance in the seventh degree under Indictment No. 600/93, upon his pleas of guilty, and imposing sentences.

ORDERED that the judgments are affirmed.

Contrary to the People's contention, the defendant's purported waiver of his right to appeal cannot be considered knowing, voluntary, and intelligent, as the defendant was incorrectly informed, in a preprinted waiver form, that his right to appeal did not include the right to appellate review of his sentence on the ground that it was excessive (*see People v Hurd*, 44 AD3d 791, 792).

September 23, 2008

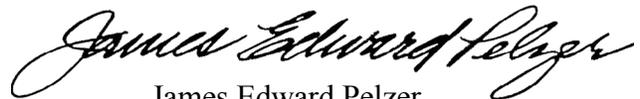
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Accordingly, we have considered the defendant's contention that the sentences imposed constituted cruel and unusual punishment, but find that contention to be without merit. There are no exceptional circumstances warranting modification of the sentences, which were within permissible statutory limits (*see People v Jones*, 39 NY2d 694, 697; *People v Brathwaite*, 263 AD2d 89, 92; *see also People v Peterson*, 155 AD2d 487, 488; *People v Martinez*, 151 AD2d 509; *People v DeMent*, 144 AD2d 690; *People v Buffa*, 139 AD2d 751, 751-752).

SKELOS, J.P., COVELLO, LEVENTHAL and BELEN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court