

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

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_____AD3d_____

Submitted - June 20, 2008

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
RUTH C. BALKIN, JJ.

2005-05246

DECISION & ORDER

The People, etc., respondent,
v Timothy Mitchell, appellant.

(Ind. No. 1990/02)

Lynn W. L. Fahey, New York, N.Y., for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Nicoletta J. Caferri, and Daniel Bresnahan of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Chin-Brandt, J.), rendered May 18, 2005, convicting him of attempted burglary in the second degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant failed to preserve for appellate review his contention that the actions or inactions of defense counsel were the responsibility of the court, for purposes of determining whether there was an unreasonable delay in imposing sentence (*see People v Marshall*, 228 AD2d 15; *People v Butti*, 250 AD2d 859; *People v Garcia*, 296 AD2d 509). There is, in any event, no merit to that contention.

The defendant was primarily responsible for the extensive delay in imposing sentence, and he may not benefit from the delay he caused (*see People v Marshall*, 228 AD2d 15; *People v*

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Pierre-Paul, 289 AD2d 262). The Supreme Court did not lose jurisdiction over the matter by reason of the delay (see *People v Drake*, 61 NY2d 359; *Matter of Weinstein v Haft*, 60 NY2d 625; *People v Williams*, 299 AD2d 568).

FISHER, J.P., COVELLO, ANGIOLILLO and BALKIN, 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