

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

D20254
Y/kmg

_____AD3d_____

Argued - June 16, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. LIFSON
FRED T. SANTUCCI
HOWARD MILLER, JJ.

2004-00379

DECISION & ORDER

The People, etc., respondent,
v William Burgess, appellant.

(Ind. No. 601/03)

Steven Banks, New York, N.Y. (Michael C. Taglieri of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Rosenzweig, J.), rendered December 16, 2003, convicting him of attempted disseminating indecent material to minors in the first degree, attempted disseminating indecent material to minors in the second degree, and attempted endangering the welfare of a child, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is modified, on the law, by vacating the conviction of attempted disseminating indecent material to minors in the second degree, vacating the sentence imposed thereon, and dismissing that count of the indictment; as so modified, the judgment is affirmed.

The People assert that the injunction issued by the court in *American Libs. Ass'n v Pataki* (969 F Supp 160 [SD NY 1997]) compels them to request vacatur of the defendant's conviction for attempted disseminating indecent material to minors in the second degree. Accordingly, we vacate that conviction and dismiss that count of the indictment on the People's request.

September 16, 2008

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The defendant's remaining contentions are unpreserved for appellate review, and we decline to review them in the exercise of our interest of justice jurisdiction (*see* CPL 470.05[2]; *People v Simon*, 6 AD3d 733, 733; *People v Drysdale*, 295 AD2d 533, 533).

RIVERA, J.P., LIFSON, SANTUCCI and MILLER, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court