

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

D20257
W/kmg

_____AD3d_____

Submitted - May 21, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. LIFSON
HOWARD MILLER
EDWARD D. CARNI
RANDALL T. ENG, JJ.

2006-08176

DECISION & ORDER

The People, etc., respondent,
v Shamell Whindleton, appellant.

(S.C.I. No. 766/05)

Gary E. Eisenberg, New City, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Laurie Sapakoff, Richard Longworth Hecht, and Anthony J. Servino of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Westchester County (Loehr, J.), rendered August 2, 2006, convicting him of criminal sexual act in the first degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that a condition of probation, which precluded him from residing with his mother and his siblings, violated Penal Law § 65.10 and the United States Constitution. Under the circumstances of this case, the County Court was authorized to impose this condition of probation since it had a rehabilitative purpose, and was necessary to ameliorate the conduct which gave rise to the offense and to prevent the incarceration of the defendant (*see* Penal Law § 65.10[1], [2], [5]; *People v Rocco*, 309 AD2d 882; *People v Myatt*, 248 AD2d 68). Furthermore, there was a substantial showing that the challenged condition was reasonably and necessarily related to the rehabilitative and ameliorative purposes of the statute (*see Farrell v Burke*,

August 19, 2008

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449 F3d 470, 497; *Birzon v King*, 469 F2d 1241, 1243; *cf. Tremper v Ulster County Dept. of Probation*, 160 F Supp 2d 352).

The defendant's constitutional claim is without merit.

RIVERA, J.P., LIFSON, MILLER, CARNI and ENG, 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