

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

D20298
W/kmg

_____AD3d_____

Submitted - June 12, 2008

ROBERT A. SPOLZINO, J.P.
STEVEN W. FISHER
EDWARD D. CARNI
THOMAS A. DICKERSON, JJ.

2005-04021

DECISION & ORDER

The People, etc., respondent,
v Rene Hernandez, appellant.

(Ind. No. 10634/97)

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

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Jeanette Lifschitz, and Muhammad Ikhlas of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Queens County (Eng, J.), dated March 30, 2005, which denied his motion for resentencing pursuant to the Drug Law Reform Act of 2004 (L 2004, ch 738) on his conviction of criminal sale of a controlled substance in the third degree, which sentence was originally imposed, upon a jury verdict, on March 20, 1997.

ORDERED that the order is affirmed.

The defendant's contention that the resentencing provisions of the Drug Law Reform Act of 2004 (L 2004, ch 738, §§ 1-41) violate his right to equal protection of the laws (NY Const, art I, § 11; US Const, 14th Amend) and that he was subject to cruel and unusual punishment by the application of those provisions is unreserved for appellate review (*see People v Vasquez*, _____AD3d_____ [decided herewith]; *People v Duke*, 40 AD3d 872), and we decline to reach it in the exercise of our interest of justice jurisdiction (*see CPL 470.15[6][a]*; *People v Baumann & Sons Buses, Inc.*, 6 NY3d 404, 408; *People v Felix*, 58 NY2d 156, 161).

September 9, 2008

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The defendant's contentions with respect to the Drug Law Reform Act of 2005 (L 2005, ch 643, § 1) are not properly before this Court.

SPOLZINO, J.P., FISHER, CARNI and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court