

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

D20443
Y/hu

_____AD3d_____

Submitted - September 2, 2008

STEVEN W. FISHER, J.P.
RUTH C. BALKIN
WILLIAM E. McCARTHY
CHERYL E. CHAMBERS, JJ.

2006-10395

DECISION & ORDER

The People, etc., respondent,
v Thelma Mendoza, appellant.

(Ind. No. 750-05)

S. Michael Musa-Obregon, P.C., Maspeth, N.Y. (Juan P. Luciano of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Grazia DiVincenzo of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Weber, J.), rendered February 3, 2006, convicting her of conspiracy in the second degree and criminal solicitation in the second degree, upon her plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant raises only one claim on this appeal, which is that she was denied the effective assistance of counsel because her attorney misrepresented to her that there would be no immigration consequences as a result of her plea of guilty, and that she would not have pleaded guilty had she not received this misadvice (*see People v McDonald*, 1 NY3d 109). This claim relies entirely on matter dehors the record and is thus not cognizable on direct appeal (*see People v Brisman*, 51 AD3d 685; *People v Ramsey*, 49 AD3d 565).

FISHER, J.P., BALKIN, McCARTHY and CHAMBERS, JJ., concur.

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DECISION & ORDER ON MOTION

The People, etc., respondent,
v Thelma Mendoza, appellant.

(Ind. No. 750-05)

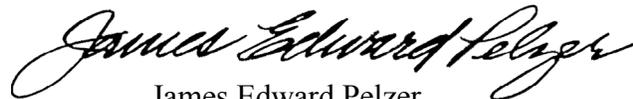
Cross motion by the respondent on an appeal from a judgment of the County Court, Suffolk County, rendered February 3, 2006, to strike the appellant's brief. By decision and order on motion of this Court dated June 9, 2008, the cross motion was held in abeyance and referred to the Justices hearing the appeal for determination upon the argument or submission of the appeal.

Upon the papers filed in support of the cross motion, no papers having been filed in opposition thereto, and upon the submission of the appeal, it is

ORDERED that the cross motion is granted to the extent of striking the fourth and fifth sentences on page 8 of the appellant's brief and the fourth and fifth complete sentences on page 13 of the appellant's brief, and those sentences have not been considered on the determination of the appeal, and the motion is otherwise denied.

FISHER, J.P., BALKIN, McCARTHY and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court