

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

D20656  
O/hu

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - September 19, 2008

REINALDO E. RIVERA, J.P.  
MARK C. DILLON  
JOSEPH COVELLO  
DANIEL D. ANGIOLILLO, JJ.

---

2006-02079

DECISION & ORDER

The People, etc., respondent,  
v George Konstantinides, appellant.

(Ind. No. 605/04)

---

Lynn W. L. Fahey, New York, N.Y. (De Nice Powell of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Buchter, J.) rendered February 6, 2006, convicting him of criminal possession of a weapon in the second degree and criminal possession of a weapon in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant was not denied the effective assistance of counsel due to an alleged conflict of interest. A defendant alleging ineffective assistance of counsel based on a conflict of interest must do more than show that defense counsel had a potential conflict of interest. To prevail, the defendant must establish that the conflict of interest in fact affected the conduct of his defense (*see People v Abar*, 99 NY2d 406; *People v Smart*, 96 NY2d 793; *People v Longtin*, 92 NY2d 640, 644; *People v Alicea*, 61 NY2d 23, 31). The defendant failed to do so.

The defendant's contention that he was entitled to a hearing pursuant to CPL 400.21(5) is unpreserved for appellate review and, in any event, is without merit.

October 14, 2008

Page 1.

PEOPLE v KONSTANTINIDES, GEORGE

The defendant's contention that his sentencing as a persistent violent felony offender violated his constitutional right to a jury trial pursuant to *Apprendi v New Jersey* (530 US 466) is unpreserved for appellate review (see *People v Singh*, 35 AD3d 633, 634) and, in any event, is without merit (see *People v Rawlins*, 10 NY3d 136, 158; *People v Rivera*, 5 NY3d 61, 67).

RIVERA, J.P., DILLON, COVELLO and ANGIOLILLO, 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