

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

D20888  
W/kmg

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

Submitted - October 8, 2008

PETER B. SKELOS, J.P.  
DAVID S. RITTER  
MARK C. DILLON  
EDWARD D. CARNI  
JOHN M. LEVENTHAL, JJ.

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2007-06205

DECISION & ORDER

The People, etc., respondent,  
v Jose Rosado Cruz, appellant.

(Ind. No. 06-1065)

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Michael G. Paul, New City, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Valerie A. Livingston, Richard Longworth Hecht, and Anthony J. Servino of counsel; Ashley J. McCarthy on the brief), for respondent.

Appeal by the defendant from a judgment of the County Court, Westchester County (Zambelli, J.), rendered June 12, 2007, convicting him of grand larceny in the second degree and unauthorized use of a motor vehicle in the third degree, upon his plea of guilty, and imposing sentence.

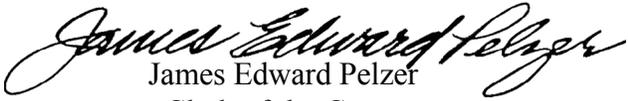
ORDERED that the judgment is affirmed.

The defendant contends that the County Court erred in sentencing him as a second felony offender on the ground that his prior felony conviction was jurisdictionally defective (*see People v Quarcini*, 4 AD3d 864). The defendant, however, was fully advised of his right to a hearing to controvert the predicate felony statement filed by the People, including the right to challenge the jurisdictional propriety of his prior conviction. “His failure to object to, or controvert the use of, his prior felony conviction as a predicate felony, or request a hearing thereon, was a waiver of his right to challenge that conviction and its validity” (*People v Andre*, 132 AD2d 560, 560, quoting *People v Banks*, 117 AD2d 611, 611; *see People v Crippa*, 245 AD2d 811; *People v*

*Shriay*, 240 AD2d 783; *People v Russell*, 234 AD2d 979; *People v Barton*, 200 AD2d 888; *People v Alexander*, 176 AD2d 947; *People v Ubiles*, 130 AD2d 788).

SKELOS, J.P., RITTER, DILLON, CARNI and LEVENTHAL, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court