

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

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_____AD3d_____

Submitted - October 8, 2008

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

2007-04233

DECISION & ORDER

The People, etc., respondent,
v Clarence Murphy, appellant.

(Ind. No. 06-00864)

John M. Schwarz, Jr., Suffern, N.Y., for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (Andrew R. Kass of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (DeRosa, J.), rendered April 26, 2007, convicting him of criminal possession of a controlled substance in the fourth degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's valid waiver of his right to appeal (*see People v Ramos*, 7 NY3d 737; *People v Callahan*, 80 NY2d 273) precludes review of his challenge to the factual sufficiency of the plea allocution (*see People v McCarthy*, 53 AD3d 589; *People v Nash*, 38 AD3d 684; *People v Curras*, 1 AD3d 445, 446).

The defendant's contention that the court failed to fulfill a condition of the plea when it sentenced him without a positive laboratory report is unpreserved for appellate review (*see People v Monk*, 28 AD3d 793).

October 28, 2008

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To the extent that the defendant is claiming that his plea of guilty was not knowing, voluntary, and intelligent, this issue is unpreserved for appellate review, since he did not move to withdraw his plea of guilty, and the case does not fall within the narrow exception to the preservation requirement (see *People v Lopez*, 71 NY2d 662, 666; *People v Ross*, 52 AD3d 624, *lv denied* 11 NY3d 741; *People v Rodriguez*, 51 AD3d 1043).

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

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court