

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

D20898
Y/kmg

_____AD3d_____

Argued - October 6, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. LIFSON
HOWARD MILLER
RANDALL T. ENG, JJ.

2006-06157

DECISION & ORDER

The People, etc., respondent,
v Larry Washington, appellant.

(Ind. No. 2622/04)

Lynn W. L. Fahey, New York, N.Y. (Paul Skip Laisure of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Kristin M. Helmers and Norman Corenthal of counsel), for respondent.

Appeal by the defendant from an amended judgment of the Supreme Court, Kings County (Sullivan, J.), rendered May 31, 2006, revoking a sentence of probation previously imposed by the same court, upon a finding that he had violated a condition thereof, after a hearing, and imposing a sentence of imprisonment upon his previous conviction of attempted burglary in the second degree.

ORDERED that the amended judgment is affirmed.

Contrary to the defendant's contention, his constitutional right to due process was not violated by the admission of hearsay statements made to the police and hospital personnel by the assault victim, who did not testify at the probation revocation hearing. "A hearing on a probation violation is a summary, informal procedure which does not require strict adherence to the rules of evidence" (*People v Minard*, 161 AD2d 607, 607; *People v Tyrrell*, 101 AD2d 946; *People v Ebert*, 18 AD3d 963, 964), and hearsay evidence is admissible (*see* CPL 410.70[3]). Moreover, the admission of the assault victim's hearsay statements to the police did not implicate the Confrontation Clause of the Sixth Amendment because a probation revocation hearing is not a criminal prosecution (*see People v Maldonado*, 44 AD3d 793). Furthermore, the court's determination that the defendant

October 28, 2008

Page 1.

PEOPLE v WASHINGTON, LARRY

violated the terms of his probation by committing a new offense was based “upon a preponderance of the evidence which requires a residuum of competent legal evidence in the record” (*People v Matula*, 258 AD2d 670, 670-671; see *People v Franco*, 267 AD2d 399; *People v Park*, 203 AD2d 596).

RIVERA, J.P., LIFSON, MILLER and ENG, 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