

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

D20909  
G/kmg

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Argued - October 7, 2008

ROBERT A. SPOLZINO, J.P.  
DAVID S. RITTER  
FRED T. SANTUCCI  
EDWARD D. CARNI, JJ.

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2006-08548

DECISION & ORDER

The People, etc., respondent,  
v Rudolph Bethea, appellant.

(Ind. No. 2408/99)

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Lynn W. L. Fahey, New York, N.Y. (Jonathan M. Kratter of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Jeanette Lifschitz, and Danielle Fenn of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Lewis, J.), rendered June 2, 2006, convicting him of robbery in the third degree and criminal possession of stolen property in the third degree, upon his plea of guilty, and sentencing him to consecutive indeterminate terms of 3½ to 7 years imprisonment on each count.

ORDERED that the judgment is modified, on the law, by providing that the sentences imposed shall run concurrently with each other; as so modified, the judgment is affirmed.

The People failed to meet their burden of establishing the legality of the consecutive sentences with facts demonstrating that the robbery and the possession of the property stolen during the robbery were “separate and distinct acts” (*People v Eddie*, 87 NY2d 640, 643; *see People v Hamilton*, 4 NY3d 654; *People v Ramirez*, 89 NY2d 444; *People v Brown*, 80 NY2d 361; *People v Garcia*, 287 AD2d 466). Thus, the sentences should have been imposed to run concurrently.

SPOLZINO, J.P., RITTER, SANTUCCI and CARNI, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

November 5, 2008

PEOPLE v BETHEA, RUDOLPH