

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

D20975
X/kmg

_____AD3d_____

Submitted - October 15, 2008

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

2007-11072

DECISION & ORDER

The People, etc., respondent,
v Perry Knox, appellant.

(Ind. No. 38/07)

Steven A. Feldman, Uniondale, N.Y. (Arza Feldman of counsel), for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Kirsten A. Rappleyea of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Hayes, J.), rendered November 19, 2007, convicting him of robbery in the third degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is modified, as a matter of discretion in the interest of justice, by vacating the sentence imposed thereon; as so modified, the judgment is affirmed, and the matter is remitted to the County Court, Dutchess County, for resentencing in accordance herewith.

Contrary to his contention, the defendant pleaded guilty to robbery in the third degree with a promised sentence that included restitution. While it may have been improper to defer the amount of restitution to the time of sentencing, the court properly fixed the amount and terms of restitution at the time it pronounced sentence (*cf. People v Hong Ping Lou*, 299 AD2d 559, 560-561; *People v Bauer*, 229 AD2d 502; *People v Jackson*, 180 AD2d 755). Furthermore, prior to sentencing, the defendant reached an agreement with the court as to, inter alia, the amount of restitution and, at sentencing, the defendant expressly agreed to the amount of restitution (*see People v Phillips*, 247 AD2d 655, 656).

Although the court sentenced the defendant to probation, which was previously agreed

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to during the plea proceedings, it neglected at sentencing to recite the length of the term of probation. Accordingly, in the interest of justice, we remit the matter to the County Court, Dutchess County, for resentencing to include such recitation.

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