

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

D21058
Y/kmg

_____AD3d_____

Argued - October 21, 2008

ROBERT A. SPOLZINO, J.P.
ANITA R. FLORIO
WILLIAM E. McCARTHY
THOMAS A. DICKERSON, JJ.

2005-06933

DECISION & ORDER

The People, etc., respondent,
v Anthony Long, appellant.

(Ind. No. 685/04)

Lynn W. L. Fahey, New York, N.Y. (Michelle Mogal of counsel), for appellant, and appellant pro se.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Keith Dolan of counsel; John P. Buza on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Goldberg, J.), rendered June 27, 2005, convicting him of attempted robbery in the first degree, robbery in the second degree, criminal possession of a weapon in the second degree, and criminal possession of a weapon in the third degree, after a nonjury trial, and imposing sentence.

ORDERED that the judgment is modified, on the law, by vacating the conviction of criminal possession of a weapon in the third degree and vacating the sentence imposed thereon; as so modified, the judgment is affirmed.

The defendant's conviction of criminal possession of a weapon in the third degree (*see* Penal Law former § 265.02[4]) must be vacated as that count of the indictment had been dismissed by another judge prior to trial and was later mistakenly considered by the Supreme Court (*see People v Flores*, 43 AD3d 955; *People v Romero*, 309 AD2d 953; *People v Smiley*, 303 AD2d 425).

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The defendant's remaining contentions, including those raised in his supplemental pro se brief, are without merit.

SPOLZINO, J.P., FLORIO, McCARTHY and DICKERSON, 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