

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

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_____AD3d_____

Submitted - November 12, 2008

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

2007-05920

DECISION & ORDER

The People, etc., respondent,
v Christopher Rufa, appellant.

(Ind. No. 2096-06)

Robert C. Mitchell, Riverhead, N.Y. (Alfred J. Cicale of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Michael J. Brennan of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Crecca, J.), rendered December 12, 2006, convicting him of robbery in the first degree (three counts) and attempted robbery in the first 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 precludes review of his challenge to the factual adequacy of his plea allocution (*see People v Nash*, 38 AD3d 684; *People v Mydosh*, 27 AD3d 580; *People v Curras*, 1 AD3d 445, 446). To the extent that the defendant contends that his plea was not knowing or voluntary, his claim is unpreserved for appellate review since he did not move to withdraw his plea or to vacate the judgment on that ground (*see People v Elcine*, 43 AD3d 1176, 1177; *People v Nash*, 38 AD3d 684; *People v Burgess*, 21 AD3d 904). The narrow exception to the preservation rule (*see People v Lopez*, 71 NY2d 662, 666) is inapplicable here (*see People v Smith*, 43 AD3d 474; *People v Sandson*, 6 AD3d 632).

December 9, 2008

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The defendant's remaining contention is without merit.

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