

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

D21513
O/kmg

_____AD3d_____

Submitted - November 24, 2008

REINALDO E. RIVERA, J.P.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
ARIEL E. BELEN, JJ.

2008-00893

DECISION & ORDER

The People, etc., respondent,
v Carlos Perez, appellant.

(Ind. No. 7725/00)

Steven Banks, New York, N.Y. (David Crow of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Phyllis Mintz of counsel; Caroline Bishop on the brief), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Gerges, J.), dated January 22, 2008, which denied his motion for resentencing pursuant to the Drug Law Reform Act of 2005 (L 2005, ch 643) on his conviction of criminal sale of a controlled substance in the second degree, which sentence was originally imposed, upon his plea of guilty, on May 16, 2001.

ORDERED that the order is affirmed.

The Supreme Court providently exercised its discretion in denying the defendant's motion for resentencing pursuant to the Drug Law Reform Act of 2005 (L 2005, ch 643; hereinafter the 2005 DLRA) on substantial justice grounds. The defendant has a prior criminal history dating back to 1987, which includes two drug-related felonies. Moreover, the 2005 DLRA expressly permits the court to consider the institutional record of confinement of the person seeking resentencing (*see* Drug Law Reform Act, L 2005, ch 643, § 1; *People v Flores*, 50 AD3d 1156; *People v Vega*, 40 AD3d 1020, 1020-1021). Here, during approximately six years of incarceration, the defendant received disciplinary tickets for six Tier 3 and ten Tier 2 infractions, which included testing positive for cocaine use, possession of heroin, fighting with a fellow inmate, possession of a sharpened metal rod known as a "shank," and possession of gang-related materials. Under these

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circumstances, the court properly concluded that substantial justice dictated the denial of the defendant's resentencing motion (*see* L 2005, ch 643, § 1; *People v Curry*, 52 AD3d 732; *People v Flores*, 50 AD3d 1156, 1157; *People v Stamps*, 50 AD3d 827, 827-828; *People v Rivers*, 43 AD3d 1247; *People v Vega*, 40 AD3d 1020, 1020-1021; *People v Sanders*, 36 AD3d 944).

RIVERA, J.P., ANGIOLILLO, ENG and BELEN, 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