

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

D21569
O/kmg

_____AD3d_____

Argued - December 1, 2008

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
WILLIAM E. McCARTHY
THOMAS A. DICKERSON, JJ.

2005-11690

DECISION & ORDER

The People, etc., respondent,
v James Braithwaite, appellant.

(Ind. No. 2674/85)

Lynn W. L. Fahey, New York, N.Y. (Sarah J. Berger of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Linda Breen of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Demarest, J.), dated November 9, 2005, which, after a hearing, denied his motion for resentencing pursuant to the Drug Law Reform Act of 2004 (L 2004, ch 738) on his conviction of criminal possession of a controlled substance in the first degree, criminal possession of a controlled substance in the third degree, and criminal possession of a weapon in the third degree (two counts), which sentence was originally imposed, upon a jury verdict, on October 3, 1985.

ORDERED that the order is affirmed.

Contrary to the defendant's contention, the Supreme Court providently exercised its discretion in determining that "substantial justice" dictated the denial of the defendant's application for resentencing (*see People v Curry*, 52 AD3d 732; *People v Flores*, 50 AD3d 1156; *People v Stamps*, 50 AD3d 827).

December 23, 2008

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The defendant's remaining contentions are without merit.

SKELOS, J.P., SANTUCCI, McCARTHY and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer
Clerk of the Court