

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

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Submitted - November 25, 2008

STEVEN W. FISHER, J.P.
ANITA R. FLORIO
EDWARD D. CARNI
CHERYL E. CHAMBERS, JJ.

2007-03166

DECISION & ORDER

The People, etc., respondent,
v George Miller, Jr., appellant.

(Ind. No. 1350/06)

Bassett & Bassett, P.C., Central Islip, N.Y. (Kerry Sloane Bassett of counsel), for appellant.

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

Appeal by the defendant from a judgment of the County Court, Suffolk County (Hudson, J.), rendered March 23, 2007, convicting him of offering a false instrument for filing in the first degree (14 counts), upon a jury verdict, and sentencing him on each count to five years probation and six months concurrent imprisonment as a condition thereof, in addition to fines totaling \$28,000.

ORDERED that the judgment is modified, as a matter of discretion in the interest of justice, by vacating the terms of concurrent imprisonment imposed as a condition of the defendant's probation; as so modified, the judgment is affirmed, and the matter is remitted to the County Court, Suffolk County, for further proceedings pursuant to CPL 460.50(5).

Viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620, 621), we find that it was legally sufficient to establish the defendant's guilt beyond a reasonable doubt. Moreover, in fulfilling our responsibility to conduct an independent review of the weight of the evidence (*see CPL 470.15[5]; People v Danielson*, 9 NY3d 342), we nevertheless accord great deference to the jury's opportunity to view the witnesses, hear the

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testimony, and observe demeanor (*see People v Mateo*, 2 NY3d 383, 410, *cert denied* 542 US 946; *People v Bleakley*, 69 NY2d 490, 495). Upon our independent review pursuant to CPL 470.15(5), we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

The sentence imposed was excessive to the extent indicated herein.

FISHER, J.P., FLORIO, CARNI and CHAMBERS, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court