

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

D21261  
Y/prt/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - November 6, 2008

WILLIAM F. MASTRO, J.P.  
REINALDO E. RIVERA  
STEVEN W. FISHER  
RANDALL T. ENG, JJ.

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2007-02966

DECISION & ORDER

The People, etc., respondent,  
v Robert Bowman, appellant.

(Ind. No. 3502/99)

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Lynn W. L. Fahey, New York, N.Y. (David P. Greenberg of counsel), for appellant.

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

Appeal by the defendant from a resentencing of the Supreme Court, Kings County (Marrus, J.), imposed March 14, 2007, upon his conviction of robbery in the second degree (two counts), upon a jury verdict.

ORDERED that the resentencing is affirmed.

Contrary to the defendant's contention, the Supreme Court did not improvidently exercise its discretion in denying his request, at the resentencing proceeding, for an updated presentence report and an adjournment to allow defense counsel to prepare a sentencing memorandum. The court directed that the defendant be resentenced solely for purpose of correcting its procedural error in failing to pronounce the postrelease supervision (hereinafter PRS) component of his sentence (*see People v Sparber*, 10 NY3d 457, 472), and the defendant's previously-adjudicated status as a second violent felony offender mandated the imposition of a five-year period of PRS (*see Penal Law § 70.45[2]*). The defendant's contention that the Supreme Court should have granted his request assumes that the resentencing court should have exercised discretion to reconsider

the propriety of the originally-imposed term of imprisonment in view of the fact that the sentence would now include a period of PRS. However, since the defendant has not overcome the presumption that the original sentencing court was aware that the sentence would include a period of PRS, no such exercise of discretion was warranted in this case (*see People v Stewartson*, 63 AD3d 966).

MASTRO, J.P., RIVERA, FISHER and ENG, 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