

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

D21663
X/kmg

_____AD3d_____

Submitted - December 1, 2008

PETER B. SKELOS, J.P.
HOWARD MILLER
WILLIAM E. McCARTHY
THOMAS A. DICKERSON, JJ.

2006-05027

DECISION & ORDER

The People, etc., respondent,
v Sharon Lashley, appellant.

(Ind. No. 10596/04)

Lynn W. L. Fahey, New York, N.Y., for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Eileen C. Abbot, and Naomi K. Schneidmill of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Queens County (Braun, J.), dated April 19, 2006, which denied her motion for resentencing pursuant to the Drug Law Reform Act of 2004 (L 2004, ch 738) on her conviction of criminal sale of a controlled substance in the third degree and criminal possession of a controlled substance in the third degree, which sentence was originally imposed, upon her plea of guilty, on May 10, 2005.

ORDERED that the order is affirmed.

The defendant's contention that the resentencing provisions of the Drug Law Reform Act of 2004 (L 2004, ch 738, §§ 1-41) and the Drug Law Reform Act of 2005 (L 2005, ch 643, § 1) violate her right to equal protection of the laws (NY Const, art I, § 11; US Const 14th Amend) and the constitutional prohibition against cruel and unusual punishment (*see* NY Const, art I, § 5; US Const 8th Amend) is unpreserved for appellate review because those claims were not raised before the sentencing court on the motion for resentencing (*see People v Duke*, 40 AD3d 872), and we decline to reach them in the exercise of our interest of justice jurisdiction (*cf.* CPL 470.15[6][a];

January 20, 2009

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People v Baumann & Sons Buses, Inc., 6 NY3d 404, 408; *People v Felix*, 58 NY2d 156, 161).

SKELOS, J.P., MILLER, McCARTHY and DICKERSON, 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