

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

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_____AD3d_____

Submitted - December 17, 2008

PETER B. SKELOS, J.P.
MARK C. DILLON
EDWARD D. CARNI
JOHN M. LEVENTHAL, JJ.

2007-09594

DECISION & ORDER

The People, etc., respondent,
v Keith Pooler, appellant.

(Ind. No. 2085/06)

Marianne Karas, Armonk, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Robert A. Schwartz and Jason R. Richards of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Donnino, J.), rendered May 17, 2007, convicting him of attempted criminal possession of a controlled substance in the fifth degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The decision to permit a defendant to withdraw a previously-entered plea of guilty rests within the sound discretion of the court (*see People v Seeber*, 4 NY3d 780; *People v Mann*, 32 AD3d 865; *People v Kucharczyk*, 15 AD3d 595), and this determination generally will not be disturbed absent an improvident exercise of discretion (*see People v DeLeon*, 40 AD3d 1008). Here, the defendant knowingly, voluntarily, and intelligently entered his negotiated plea of guilty with the assistance of competent counsel, in exchange for a favorable sentence promise (*see People v Mann*, 32 AD3d 865). Moreover, contrary to the defendant's arguments, his attorney was not obligated to "participate in a baseless *pro se* motion to withdraw a plea of guilty which was voluntarily,

January 20, 2009

PEOPLE v POOLER, KEITH

Page 1.

knowingly, and intelligently made” (*People v Caple*, 279 AD2d 635, 635). Nor is there any merit to the defendant’s contention that he was denied the effective assistance of counsel (see *People v Brooks*, 36 AD3d 929, 930; *People v Grimes*, 35 AD3d 882, 883).

SKELOS, J.P., DILLON, CARNI and LEVENTHAL, 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