

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

D22041
O/kmg

_____AD3d_____

Submitted - December 17, 2008

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
HOWARD MILLER
THOMAS A. DICKERSON
RANDALL T. ENG, JJ.

2006-00951

DECISION & ORDER

The People, etc., respondent,
v Richard M'Lady, appellant.

(Ind. No. 05-00099)

Mary E. Zugibe, Garnerville, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Richard L. Hecht & Argiro Kosmetatos of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Rockland County (Kelly, J.), rendered August 18, 2005, convicting him of criminal possession of a forged instrument in the second degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that his plea of guilty should be vacated because it was not knowingly, voluntarily, and intelligently made is without merit. While the pre-sentence report indicated that the defendant had a history of substance abuse and psychiatric problems, and that he had been diagnosed with bipolar disorder which was controlled by medication, there is no basis in the record to support the conclusion that at the time of the plea proceeding, he lacked the capacity to understand the proceeding or was unable to assist in his defense (*see CPL 730.30[1]; People v Hollis*, 204 AD2d 569). The responses made by the defendant at the plea and sentencing proceedings were appropriate and did not indicate that he was incapacitated (*see People v Pryor*, 11 AD3d 565; *People v Hansen*, 269 AD2d 467).

February 10, 2009

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The defendant's contention that he was denied the effective assistance of counsel is without merit (*see People v Dowicyan*, 19 AD3d 613).

SPOLZINO, J.P., SANTUCCI, MILLER, DICKERSON and ENG, 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