

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

D22139
C/cb

_____AD3d_____

Submitted - December 17, 2008

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
RUTH C. BALKIN
ARIEL E. BELEN, JJ.

2007-03033

DECISION & ORDER

The People, etc., respondent,
v John Giraldo, appellant.

(Ind. No. 2444/05)

Robert C. Mitchell, Riverhead, N.Y. (Alfred J. Cicale of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Karla Lato of counsel), for respondents.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Hudson, J.), rendered February 9, 2007, convicting him of criminal sexual act in the first degree, attempted rape in the first degree (three counts), aggravated sexual abuse in the second degree, unlawful imprisonment in the first degree (three counts), assault in the second degree (three counts), and sexual abuse in the first degree (three counts), upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant was sentenced, upon his plea of guilty, inter alia, to consecutive determinate prison terms aggregating to 30 years plus five years of postrelease supervision. He now contends that as a result of the application of Penal Law § 70.30(1)(e)(vii), his plea was not knowing, voluntary, and intelligent. This contention is without merit, because Penal Law § 70.30(1)(e)(vii) does not apply, as the consecutive terms of imprisonment imposed are all determinate terms. Thus, the defendant's sentence is precisely as pronounced by the court, unaffected by the statute to which he alludes. Moreover, the defendant's additional claim that he was deprived of the effective assistance

February 17, 2009

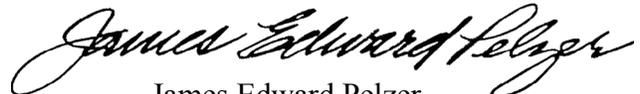
PEOPLE v GIRALDO, JOHN

Page 1.

of counsel in connection with the plea is without merit (*see People v Baldi*, 54 NY2d 137, 140).

FISHER, J.P., COVELLO, BALKIN and BELEN, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court