

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

D22326
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_____AD3d_____

Submitted - January 29, 2009

REINALDO E. RIVERA, J.P.
JOHN M. LEVENTHAL
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2007-11422

DECISION & ORDER

The People, etc., respondent,
v James Smith, appellant.

(Ind. No. 06-01416)

Stephen J. Pittari, White Plains, N.Y. (Salvatore A. Gaetani of counsel), for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (William C. Milaccio, Richard Longworth Hecht, and Anthony J. Servino of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Westchester County (Adler, J.), rendered November 15, 2007, convicting him of criminal sale of a controlled substance in the third degree (two counts), criminal possession of a controlled substance in the third degree (two counts), and criminal possession of a controlled substance in the seventh degree (two counts), after a nonjury trial, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's due process right to a speedy trial was not denied because of an unreasonable delay in prosecution (*see People v Vernace*, 96 NY2d 886, 888; *People v Taranovich*, 37 NY2d 442; *People v Cesar*, 6 AD3d 547). The People's explanation, as set forth in an affirmation of an assistant district attorney, that the delay of 12 months between the acts which formed the basis for the charges and the defendant's arrest was due to an ongoing investigation and desire to maintain the identities of the undercover officers was reasonable (*see People v Cesar*, 6 AD3d at 547; *People v Kirkley*, 295 AD2d 759, 760; *People v Donovan*, 141 AD2d 835). Additionally, "no hearing was necessary on the defendant's motion to dismiss the indictment because the record was fully developed

March 3, 2009

PEOPLE v SMITH, JAMES

Page 1.

as to the reasons for the delay” (*People v Cesar*, 6 AD3d at 547; see *People v Black*, 128 AD2d 715).

The defendant’s remaining contentions are unpreserved for appellate review and, in any event, are without merit.

RIVERA, J.P., LEVENTHAL, BELEN and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court