

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

D22594
T/kmg

_____AD3d_____

Submitted - February 13, 2009

ROBERT A. SPOLZINO, J.P.
MARK C. DILLON
ANITA R. FLORIO
DANIEL D. ANGIOLILLO, JJ.

2008-03572

DECISION & ORDER

The People, etc., respondent,
v Jason Billings, appellant.

(Ind. No. 07-00885)

David A. Brodsky, Central Valley, N.Y., for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (David R. Huey of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (Freehill, J.), rendered April 3, 2008, convicting him of attempted robbery in the first degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant failed to preserve for appellate review his challenge to the validity of his plea of guilty (*see People v Sanchez-Martinez*, 35 AD3d 632, 633; *People v Stewart*, 30 AD3d 624; *People v Mead*, 27 AD3d 767). The rare exception to the preservation requirement (*see People v Lopez*, 71 NY2d 662, 666) is not applicable here, as after the defendant's initial equivocal responses, the court made further inquiry and the defendant admitted his guilt (*see People v Sanchez-Martinez*, 35 AD3d 632; *People v Mead*, 27 AD3d 767).

In any event, as the defendant's plea was to a lesser offense in satisfaction of the indictment, and the plea allocution established that the defendant understood the charges against him, a factual basis for the plea was not necessary (*see People v Richardson*, 50 AD3d 704; *People v Martin*, 239 AD2d 436; *People v Carruthers*, 227 AD2d 500).

March 24, 2009

Page 1.

PEOPLE v BILLINGS, JASON

While the defendant preserved the issue of whether the sentencing court should have granted him youthful offender treatment (*see People v Murray*, 57 AD3d 921), his valid written waiver of the right to appeal encompassed that issue, as well as any claim that the sentence imposed was excessive (*see People v Hines*, 41 AD3d 734, 735; *People v Vasquez*, 40 AD3d 1134; *People v Valentin*, 15 AD3d 424; *People v Friedlander*, 11 AD3d 556).

The defendant's remaining contention is without merit.

SPOLZINO, J.P., DILLON, FLORIO and ANGIOLILLO, 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