

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

D22823
Y/prt

_____AD3d_____

Submitted - February 4, 2009

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
CHERYL E. CHAMBERS, JJ.

2006-05205

DECISION & ORDER

The People, etc., respondent,
v Elvis Rodriguez, appellant.

(Ind. No. 127/99)

Gary E. Eisenberg, New City, N.Y., for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Bridget Rahilly Steller of counsel), for respondent.

Appeal by the defendant from an order of the County Court, Dutchess County (Dolan, J.), dated April 20, 2006, which denied, without a hearing, his motion for resentencing pursuant to the Drug Law Reform Act of 2005 (L 2005, ch 643) on his conviction of criminal possession of a controlled substance in the second degree, which sentence was originally imposed, upon his plea of guilty, on April 12, 2000.

ORDERED that the order is affirmed.

On April 12, 2000, the defendant was sentenced to an indeterminate term of 3 years to life imprisonment, upon his plea of guilty to criminal possession of a controlled substance in the second degree. He was released on parole on March 3, 2001, but was soon re-arrested for new drug offenses. On December 18, 2001, he was sentenced to an indeterminate term of 5 to 10 years imprisonment as a second felony offender upon his plea of guilty to the crime of criminal sale of a controlled substance in the third degree. This sentence was to run consecutively to the time remaining on the sentence for his 2000 conviction when his parole thereunder was revoked.

As the defendant had already been released on parole in connection with his 2000

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conviction when he brought his motion for resentencing under the Drug Law Reform Act of 2005 (L 2005, ch 643), he was no longer eligible for resentencing even though his parole had been revoked when he was subsequently convicted in 2001 of a new drug offense (*see People v Mills*, 11 NY3d 527; *People v Hardy*, 49 AD3d 779; *People v Hernandez*, 46 AD3d 1425; *People v Cavallaro*, 46 AD3d 1024). Thus, the Supreme Court properly denied the defendant's motion without first holding a hearing.

SKELOS, J.P., SANTUCCI, ANGIOLILLO, DICKERSON and CHAMBERS, 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