

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

D22851
O/kmg

_____AD3d_____

Submitted - March 11, 2009

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL, JJ.

2008-03041

DECISION & ORDER

The People, etc., respondent,
v Philip J. Penna, appellant.

(Ind. No. 1665/05)

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

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Steven A. Hovani of counsel),
for respondent.

Appeal by the defendant from a resentence of the County Court, Suffolk County
(Efman, J.), imposed March 6, 2008, after remittitur from this Court (*see People v Penna*, 47 AD3d
844).

ORDERED that the resentence is affirmed.

We have reviewed the record and agree with the defendant's assigned counsel that
there are no nonfrivolous issues which could be raised on appeal. Counsel's application for leave to
withdraw as counsel is granted (*see Anders v California*, 386 US 738; *People v Paige*, 54 AD2d 631;
cf. People v Gonzalez, 47 NY2d 606).

SPOLZINO, J.P., SANTUCCI, ANGIOLILLO and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

April 21, 2009

PEOPLE v PENNA, PHILIP J.