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

D22903
W/hu

_____AD3d_____ Submitted - March 11, 2009

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
HOWARD MILLER
THOMAS A. DICKERSON
CHERYL E. CHAMBERS, JJ.

2007-04090 DECISION & ORDER

The People, etc., respondent,
v Howard Toomer, appellant.

(Ind. No. 366/06)

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

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Grazia DiVincenzo of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Gazzillo, J.), rendered March 20, 2007, convicting him of grand larceny in the second degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that the County Court failed to conduct a hearing or to adduce sufficient evidence to determine the amount of restitution imposed. However, this claim is unpreserved for appellate review since the defendant failed to request a hearing or otherwise challenge the amount of restitution imposed at sentencing (*see* Penal Law § 60.27[2]; *People v Horne,* 97 NY2d 404, 414 n 3; *People v Allen,* 305 AD2d 421). In any event, since the defendant agreed at sentencing to the amount of restitution imposed by the court, the court did not err in

imposing restitution without conducting a hearing (*see People v Ali,* 233 AD2d 517; *People v Jackson,* 201 AD2d 504).

MASTRO, J.P., FISHER, MILLER, DICKERSON and CHAMBERS, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court