

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

D22986
W/prt

_____AD3d_____

Submitted - March 24, 2009

STEVEN W. FISHER, J.P.
HOWARD MILLER
CHERYL E. CHAMBERS
LEONARD B. AUSTIN, JJ.

2007-01507

DECISION & ORDER

The People, etc., respondent,
v Rudy Hernandez, appellant.

(Ind. No. 1234/06)

The Law Firm of Anthony D. Denaro, P.C., Hempstead, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Margaret E. Mainusch and Andrew Fukuda of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Ayles, J.), rendered January 18, 2007, convicting him of assault in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's claim of ineffective assistance of counsel is based, in part, on matter dehors the record and, therefore, cannot be reviewed on direct appeal (*see People v Sloane*, 59 AD3d 745; *People v Borthwick*, 51 AD3d 1211). Insofar as we are able to review the defendant's claim, the record does not support the defendant's claim that he was denied the effective assistance of counsel under either the Federal or State Constitution (*see Strickland v Washington*, 466 US 668; *People v Baldi*, 54 NY2d 137; *People v Brisman*, 51 AD3d 685).

April 28, 2009

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The defendant's remaining contention is unpreserved for appellate review and, in any event, is without merit.

FISHER, J.P., MILLER, CHAMBERS and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court