

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

D23309
Y/prt

_____AD3d_____

Submitted - March 4, 2009

REINALDO E. RIVERA, J.P.
MARK C. DILLON
HOWARD MILLER
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2007-08705

DECISION & ORDER

The People, etc., respondent,
v James D. Hughes, appellant.

(Ind. No. 2419/06)

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

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

Appeal by the defendant from a judgment of the County Court, Suffolk County (Hudson, J.), rendered January 4, 2007, convicting him of robbery in the second degree (two counts), upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

A motion to withdraw a plea of guilty rests within the sound discretion of the County Court (*see* CPL 220.60[3]; *People v Bullard*, 33 AD3d 715; *People v Turner*, 23 AD3d 503; *People v Ramsingh*, 267 AD2d 406), whose determination will generally not be disturbed absent an improvident exercise of discretion (*see People v DeJean*, 40 AD3d 1008). Here, the County Court providently exercised its discretion in denying, without a hearing, the defendant's pro se application to withdraw his plea of guilty, since his unsubstantiated claim of coercion was refuted by his statements during the plea allocution (*see People v Caufield*, 57 AD3d 796, *lv denied* 12 NY3d 781; *People v Drago*, 50 AD3d 920; *People v Fernandez*, 291 AD2d 456).

The defendant's valid waiver of his right to appeal precludes appellate review of his contentions that the sentence imposed was excessive and that he was denied the effective assistance

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of counsel except to the extent that the alleged ineffective assistance affected the voluntariness of his plea (*see People v Lopez*, 6 NY3d 248, 255; *People v Seaberg*, 74 NY2d 1; *People v Perez*, 51 AD3d 1043). To the extent that the defendant is claiming that the ineffective assistance of counsel rendered his plea involuntary, the record reveals that the defendant received an advantageous plea, and nothing in the record casts doubt on the apparent effectiveness of counsel (*see People v Ford*, 86 NY2d 397; *People v Rossetti*, 55 AD3d 637, 638; *People v Boodhoo*, 191 AD2d 448).

RIVERA, J.P., DILLON, MILLER, BALKIN and LEVENTHAL, 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