

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

D23443
O/kmg

_____AD3d_____

Submitted - April 29, 2009

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

2007-10182

DECISION & ORDER

The People, etc., respondent,
v Kya Finn, appellant.

(Ind. No. 06-00848)

Abbie Goldbas, Utica, N.Y., for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (Lauren E. Dunnock and Andrew R. Kass of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (DeRosa, J.), rendered October 24, 2007, convicting her of burglary in the second degree, upon her plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that her plea of guilty was not knowing, voluntary, and intelligent is unpreserved for appellate review since she did not move to withdraw her plea of guilty prior to sentencing (*see* CPL 220.60[3]; *People v Pellegrino*, 60 NY2d 636; *People v Kornegay*, 60 AD3d 696; *People v LeGrady*, 50 AD3d 1059, 1060; *People v Ramsey*, 49 AD3d 565). Although the defendant made a post-conviction motion pursuant to CPL article 440 to vacate the judgment, the issues raised in that motion are not properly before us on this direct appeal (*see People v DaCosta*, 217 AD2d 661, 662; *People v Esposito*, 157 AD2d 850). In any event, we find that the plea was knowing, voluntary, and intelligent (*see People v Harris*, 61 NY2d 9, 17).

June 2, 2009

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The defendant's claim that she did not receive the effective assistance of counsel is without merit. We find that the defendant was afforded meaningful representation (*see People v Ford*, 86 NY2d 397, 404; *People v Baldi*, 54 NY2d 137, 147).

SPOLZINO, J.P., SANTUCCI, ANGIOLILLO, LEVENTHAL and LOTT, 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