

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

D23632
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_____AD3d_____

Submitted - May 28, 2009

FRED T. SANTUCCI, J.P.
JOSEPH COVELLO
JOHN M. LEVENTHAL
ARIEL E. BELEN, JJ.

2008-01697

DECISION & ORDER

The People, etc., respondent,
v Sheldon Killiebrew, appellant.

(Ind. No. 5214/00)

Lynn W. L. Fahey, New York, N.Y. (David P. Greenberg of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Jodi L. Mandel of counsel), for respondent.

Appeal by the defendant from a resentencing of the Supreme Court, Kings County (Chambers, J.), imposed December 10, 2007, upon his conviction of assault in the first degree and burglary in the first degree, upon a jury verdict.

ORDERED that the resentencing is affirmed.

The defendant contends that the resentencing court improperly failed to exercise its sentencing discretion to reconsider the sentence as a whole, in that the court should have considered whether the duration of the terms of imprisonment originally imposed on his conviction of assault in the first degree and burglary in the first degree were still appropriate in light of the fact that periods of postrelease supervision would be imposed. The defendant's contention is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Nieves*, 2 NY3d 310, 315-316; *People v Marshall*, 228 AD2d 15, 17-18; *cf. People v D'Avila*, 21 AD3d 905; *People v McHale*, 165 AD2d 800), and, in any event, is without merit (*see People v Stewartson*, _____AD3d_____ [2d Dept 2009]).

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The defendant's remaining contentions are without merit.

SANTUCCI, J.P., COVELLO, LEVENTHAL and BELEN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court