

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

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A. GAIL PRUDENTI, P.J.  
FRED T. SANTUCCI  
ANITA R. FLORIO  
HOWARD MILLER, JJ.

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2005-06149

DECISION & ORDER

The People, etc., respondent,  
v Andre Smith, appellant.

(Ind. No. 04-1060)

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Andre Smith, Alden, N.Y., appellant pro se.

Janet DiFiore, District Attorney, White Plains, N.Y. (Lois Cullen Valerio and Richard Longworth Hecht of counsel), for respondent.

Jason M. Bernheimer, Katonah, N.Y., former appellate counsel.

Application by the appellant for a writ of error coram nobis to vacate, on the ground of ineffective assistance of appellate counsel, a decision and order of this Court dated April 17, 2007 (*People v Smith*, 39 AD3d 773), affirming a judgment of the County Court, Westchester County, rendered May 24, 2005.

ORDERED that the application is denied.

The appellant has failed to establish that he was denied the effective assistance of appellate counsel (*see Jones v Barnes*, 463 US 745; *People v Stultz*, 2 NY3d 277).

PRUDENTI, P.J., SANTUCCI, FLORIO and MILLER, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

June 30, 2009

PEOPLE v SMITH, ANDRE