

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

D24414
C/hu

_____AD3d_____

Submitted - September 8, 2009

ROBERT A. SPOLZINO, J.P.
HOWARD MILLER
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

2009-00912

DECISION & ORDER

The People, etc., respondent,
v Rafael Rivera, appellant.

(Ind. No. 08-00663)

Marianne Karas, Armonk, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Joseph A. Barca III, Lois Cullen Valerio, and Anthony J. Servino of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Westchester County (Neary, J.), rendered October 29, 2008, convicting him of burglary in the second degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's purported waiver of his right to appeal was not valid. The defendant's contention that the County Court abused its discretion in connection with the sentence offered in the plea negotiation is, in effect, a contention that his plea of guilty was not knowing, voluntary, and intelligent. This contention is not preserved for appellate review (*see People v Velez*, 64 AD3d 799; *People v LeGrady*, 50 AD3d 1059; *People v Vasquez*, 40 AD3d 1134; *People v Roman*, 8 AD3d 503), as the defendant did not move to withdraw his plea prior to the imposition of the agreed-upon sentence. In any event, the defendant's contentions with regard to the County Court's rejection of

September 22, 2009

Page 1.

PEOPLE v RIVERA, RAFAEL

his unilateral attempt to renegotiate the sentence offer, and with regard to any potential motion to withdraw the plea, are without merit.

SPOLZINO, J.P., MILLER, ANGIOLILLO and DICKERSON, 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