

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

D24440
C/prt

_____AD3d_____

Submitted - September 8, 2009

STEVEN W. FISHER, J.P.
RUTH C. BALKIN
L. PRISCILLA HALL
LEONARD B. AUSTIN, JJ.

2007-03158

DECISION & ORDER

The People, etc., respondent,
v David Curry, appellant.

(Ind. No. 6794/02)

Lynn W. L. Fahey, New York, N.Y., 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 judgment of the Supreme Court, Kings County (Firetog, J., at plea; D'Emic, J., at sentence), rendered February 1, 2007, convicting him of robbery in the first degree and petit larceny, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is reversed, on the law, the plea is vacated, and the matter is remitted to the Supreme Court, Kings County, for further proceedings in accordance herewith.

At the time the defendant entered a plea of guilty to robbery in the first degree and petit larceny, the court did not inform him that if he failed to complete a mental health and substance abuse treatment program, he would receive a 10-year prison term plus 5 years of postrelease supervision. As correctly conceded by the People, since the court failed to inform the defendant of

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the postrelease supervision component of his sentence at the time of his plea, the defendant is entitled to reversal as a matter of law (*see People v Louree*, 8 NY3d 541; *People v Catu*, 4 NY3d 242; *People v Gibbs*, 61 AD3d 699; *People v Borrego*, 59 AD3d 456; *People v Lipscombe*, 49 AD3d 781) and must be permitted to withdraw his plea (*see People v Hill*, 9 NY3d 189).

FISHER, J.P., BALKIN, HALL and AUSTIN, 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