

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

D24807  
W/kmg

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Submitted - October 7, 2009

REINALDO E. RIVERA, J.P.  
HOWARD MILLER  
RUTH C. BALKIN  
JOHN M. LEVENTHAL  
L. PRISCILLA HALL, JJ.

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2008-10614

DECISION & ORDER

The People, etc., respondent,  
v Theresa Melendez-Smith, appellant.

(Ind. No. 724/08)

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Laveman & Calvao, LLP, Plainview, N.Y. (Jennifer E. Calvao of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Michael Blakey of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Suffolk County (R. Doyle, J.), rendered October 3, 2008, convicting her of grand larceny in the second degree, upon her plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that she was denied the effective assistance of counsel is not supported by the record (*see People v Brown*, 45 NY2d 852, 853-854; *People v Harris*, 109 AD2d 351, 360). Since the defendant's claim is based on affirmations and other matter dehors the main record, it is not properly before this Court on direct appeal (*see People v Brown*, 45 NY2d at 853-854; *People v Johnson*, 64 AD3d 792, 793; *People v Mendoza*, 298 AD2d 532; *cf.* CPL 440.10[1], 440.20[1]; *People v Brown*, 45 NY2d at 854; *People v Johnson*, 64 AD3d at 793; *People v Osinoiki*, 182 AD2d 781; *People v Harris*, 109 AD2d at 360). Insofar as we are able to review the claim, the record demonstrates that the defendant was afforded meaningful representation (*see People v Ford*, 86 NY2d 397, 404).

October 27, 2009

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Furthermore, since the defendant pleaded guilty with the express understanding that if she failed to pay restitution on or before sentencing, the sentencing court would impose the enhanced sentence of which she now complains, she has no basis now to complain that her sentence was excessive (*see People v Billups*, 63 AD3d 750; *People v Kazepis*, 101 AD2d 816, 817).

RIVERA, J.P., MILLER, BALKIN, LEVENTHAL and HALL, 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