

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

D24933
Y/prt

_____AD3d_____

Submitted - October 15, 2009

WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
RANDALL T. ENG
JOHN M. LEVENTHAL, JJ.

2008-05070

DECISION & ORDER

The People, etc., respondent,
v Orlando Adams, appellant.

(Ind. No. 10158/06)

Lynn W. L. Fahey, New York, N.Y. (Barry Stendig of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano and Sharon Y. Brodt of counsel; Michael Popper on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Hollie, J.), rendered May 15, 2007, convicting him of criminal possession of a controlled substance in the third degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's waiver of his right to appeal does not preclude him from challenging the voluntariness of his plea (*see People v Seaberg*, 74 NY2d 1, 10; *People v Morrow*, 48 AD3d 704, 705). However, the defendant's contention that his plea was not knowingly and voluntarily made is unpreserved for appellate review because he never moved to withdraw his plea or vacate the judgment of conviction (*see People v Lopez*, 71 NY2d 662, 665-666; *People v Velez*, 64 AD3d 799; *People v Bolton*, 63 AD3d 1087; *People v Antoine*, 59 AD3d 560; *People v Rufa*, 57 AD3d 697;

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People v Luster, 45 AD3d 866), and we decline to review the issue in the exercise of our interest of justice jurisdiction.

MASTRO, J.P., BALKIN, ENG and LEVENTHAL, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court