

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

D25192
W/kmg

_____AD3d_____

Submitted - October 27, 2009

MARK C. DILLON, J.P.
ANITA R. FLORIO
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2005-08182

DECISION & ORDER

The People, etc., respondent,
v Aror Ark O'Diah, appellant.

(Ind. No. 3719/02)

Lynn W. L. Fahey, New York, N.Y. (Denise A. Corsí of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Johnnette Traill, and Josette Simmons-McGhee of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Eng, J.), rendered July 7, 2005, as amended March 19, 2007, convicting him of assault in the second degree and resisting arrest, after a nonjury trial, and imposing sentence.

ORDERED that the judgment, as amended, is affirmed.

The defendant's contention that his waiver of the right to a jury trial was inadequate is unreserved for appellate review (*see* CPL 470.05[2]; *People v Magnano*, 77 NY2d 941, *cert denied* 502 US 864). In any event, the record does not support the defendant's contention that the waiver was invalid, as he executed a written waiver in open court, which was approved by the trial justice, and the circumstances surrounding the waiver supported the conclusion that it was made knowingly, voluntarily, and intelligently (*see* CPL 320.10[2]; *People v Smith*, 6 NY3d 827, 828, *cert denied* 548 US 905; *People v Fani*, 59 AD3d 460; *People v Jones*, 293 AD2d 627).

DILLON, J.P., FLORIO, BALKIN and LEVENTHAL, JJ., concur.

ENTER:


James Edward Pelzer

December 1, 2009

PEOPLE v O'DIAH, AROR ARK

Clerk of the Court

December 1, 2009

PEOPLE v O'DIAH, AROR ARK