

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

D25379
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_____AD3d_____

Submitted - November 18, 2009

STEVEN W. FISHER, J.P.
FRED T. SANTUCCI
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2008-08502

DECISION & ORDER

The People, etc., respondent,
v Jamie Baer, appellant.

(Ind. No. 1141-08)

Robert C. Mitchell, Riverhead, N.Y. (Alfred J. Cicale of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Michael J. Miller of counsel;
Heather McFaulds on the brief), for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Gazzillo, J.), rendered July 28, 2008, convicting him of criminal sale of a controlled substance in the third degree (four counts) and criminal possession of a controlled substance in the third degree (four counts), upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's waiver of his right to appeal was knowing, voluntary, and intelligent (*see People v Lopez*, 6 NY3d 248, 256; *People v Seaberg*, 74 NY2d 1, 11), and it forecloses appellate review of the defendant's claim that the sentence imposed was excessive (*see People v Cenname*, 66 AD3d 795; *People v Hairston*, 53 AD3d 669). We note that the defendant was sentenced as a second felony drug offender, a status he does not challenge, and that the court merely misspoke at sentencing when it stated that the defendant was a second violent felony offender.

FISHER, J.P., SANTUCCI, DICKERSON, CHAMBERS and LOTT, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

December 15, 2009

PEOPLE v BAER, JAMIE