

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

D25380
Y/hu

_____AD3d_____

Submitted - November 18, 2009

REINALDO E. RIVERA, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL
SHERI S. ROMAN, JJ.

2008-09301

DECISION & ORDER

The People, etc., respondent,
v Dajuan Marshall, appellant.

(Ind. No. 08-00015)

Del Atwell, East Hampton, N.Y., for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Kirsten A. Rappleyea of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Hayes, J.), rendered September 23, 2008, convicting him of criminal sale of a controlled substance in the third degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the sentence was not excessive merely because the sentencing court considered the defendant's prior youthful offender adjudication at the time of sentencing. "[I]t is well established that in reaching a sentencing determination, the court may consider not only prior offenses for which the defendant was convicted, but even offenses for which he had not been convicted" (*People v Whitehead*, 46 AD3d 715, 716, quoting *People v Khan*, 146 AD2d 806, 807; *People v Gonzalez*, 242 AD2d 306, 307).

December 15, 2009

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There is no merit to the defendant's contention that he was denied the effective assistance of counsel at sentencing (*see Strickland v Washington*, 466 US 668).

RIVERA, J.P., COVELLO, ANGIOLILLO, LEVENTHAL and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court