

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

D25462
W/kmg

_____AD3d_____

Submitted - November 18, 2009

PETER B. SKELOS, J.P.
ANITA R. FLORIO
RUTH C. BALKIN
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2008-04988

DECISION & ORDER

The People, etc., respondent,
v Charles J. Colston, appellant.

(Ind. No. 1718/06)

Stefani Goldin, Melville, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Laurie K. Gibbons of counsel;
Jessica N. Reich on the brief), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Honorof, J.), rendered June 12, 2007, convicting him of criminal possession of a weapon in the second degree, criminal use of a firearm in the first degree, robbery in the first degree, and burglary in the first degree (two counts), upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's challenge to the factual sufficiency of his plea allocution is unpreserved for appellate review since the defendant failed to move to withdraw his plea or to vacate the judgment of conviction (*see* CPL 220.60[3]; 440.10; *People v Lopez*, 71 NY2d 662, 665; *People v Pellegrino*, 60 NY2d 636, 637; *People v Fiori*, 24 AD3d 687). Moreover, the "rare case" exception to the preservation requirement, as enunciated in *People v Lopez* (71 NY2d at 666), does not apply here because the defendant's allocution did not clearly cast significant doubt on his guilt, negate an essential element of the crime, or call into question the voluntariness of the plea (*see People v Nash*, 38 AD3d 684; *People v Rizzo*, 38 AD3d 571). In any event, the facts admitted in the

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allocution were sufficient to support the defendant's plea of guilty (*see People v Seeber*, 4 NY3d 780, 781; *People v Sanabria*, 52 AD3d 743, 744).

SKELOS, J.P., FLORIO, BALKIN, BELEN and AUSTIN, 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