

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

D25547
Y/prt

_____AD3d_____

Submitted - November 24, 2009

MARK C. DILLON, J.P.
FRED T. SANTUCCI
ANITA R. FLORIO
L. PRISCILLA HALL, JJ.

2008-07454

DECISION & ORDER

The People, etc., respondent,
v Devendra Ramdass, appellant.

(Ind. No. 7139/06)

Lynn W. L. Fahey, New York, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Seth M. Lieberman of counsel), for respondent.

Appeal by the defendant, as limited by his brief, from a sentence of the Supreme Court, Kings County (D'Emic, J.), imposed January 29, 2008, upon his conviction of attempted murder in the second degree and criminal possession of a weapon in the second degree, upon his plea of guilty (Leventhal, J.).

ORDERED that the sentence is reversed, on the law, and the matter is remitted to the Supreme Court, Kings County, for resentencing.

The defendant pleaded guilty in exchange for the court's promise that he would be sentenced to two concurrent determinate prison terms of six and one-half years imprisonment and a five-year period of postrelease supervision. The People did not object to the plea, but took the position that the promised sentence was too lenient. At sentencing, before a different justice, the victim and her father asked that the Supreme Court sentence the defendant to a more lenient term than promised, but the court several times expressed the erroneous belief that it was bound by the promise made by the justice who presided over the plea proceeding. As the defendant contends, and the People correctly concede, the sentencing court was not bound by the original promise. The Supreme Court was required to determine an appropriate sentence in light of all the circumstances

December 22, 2009

Page 1.

PEOPLE v RAMDASS, DEVENDRA

(see *People v Farrar*, 52 NY2d 302, 305-306; *People v Dorino*, 145 AD2d 432, 433). Consequently, the case must be remitted to the Supreme Court, Kings County, for resentencing.

DILLON, J.P., SANTUCCI, FLORIO and HALL, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court