

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

D25562  
H/nl

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - October 29, 2009

REINALDO E. RIVERA, J.P.  
THOMAS A. DICKERSON  
L. PRISCILLA HALL  
PLUMMER E. LOTT, JJ.

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2008-08755

DECISION & ORDER

The People, etc., respondent,  
v Julius Scalercio, appellant.

(Ind. No. 2781A/99)

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

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Edward A. Bannan of counsel),  
for respondent.

Appeal by the defendant from a resentence of the County Court, Suffolk County (Efman, J.), imposed August 1, 2008, upon his conviction of attempted robbery in the first degree, attempted robbery in the second degree, attempted burglary in the first degree, criminal possession of a weapon in the second degree, criminal possession of a weapon in the third degree (two counts), attempted criminal impersonation in the first degree, and conspiracy in the fourth degree, upon his plea of guilty.

ORDERED that the resentence is affirmed.

On April 29, 2002, after entering a plea of guilty, the defendant was sentenced to an aggregate determinate term of imprisonment of 10 years. On August 1, 2008, more than one year before the date on which he was scheduled to be released from incarceration, the defendant was brought before the County Court for resentencing, so that the mandatory period of postrelease supervision could be imposed (*see* Penal Law § 70.45).

Contrary to the defendant's contention, his constitutional right to due process was not

March 23, 2010

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violated by the resentencing (*see DeWitt v Ventetoulo*, 6 F3d 32, 36, *cert denied* 511 US 1032; *cf. People v Williams*, \_\_\_\_\_NY3d\_\_\_\_\_, 2010 NY Slip Op 01527 [2d Dept 2010]).

RIVERA, J.P., DICKERSON, HALL and LOTT, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court