

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

D25648
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_____AD3d_____

Submitted - December 2, 2009

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

2008-05474

DECISION & ORDER

The People, etc., respondent,
v Christopher Petteway, appellant.

(Ind. No. 508-08)

Karl E. Bonheim, Riverhead, N.Y., for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Michael J. Brennan of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County
(Gazzillo, J.), rendered June 5, 2008, convicting him of attempted criminal sale of a controlled
substance in the third degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

To the extent that the defendant's claim of ineffective assistance of counsel is based upon matter dehors the record, it is not properly before us (*see People v Ali*, 55 AD3d 919; *People v Drago*, 50 AD3d 920; *People v Villacreses*, 12 AD3d 624, 626). To the extent that the defendant's claim is reviewable, it is without merit.

The defendant also contends that the sentence of two years imprisonment followed by two years of postrelease supervision was excessive. However, since the defendant pleaded guilty with the understanding that he would receive the sentence which was thereafter actually imposed, he has no basis to now complain that the sentence was excessive (*see People v De Alvarez*, 59 AD3d

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732; *People v Fanelli*, 8 AD3d 296; *People v Mejia*, 6 AD3d 630, 631; *People v Kazepis*, 101 AD2d 816). In any event, the sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

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

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer
Clerk of the Court