

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

D25699
O/kmg

_____AD3d_____

Submitted - December 14, 2009

JOSEPH COVELLO, J.P.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
SANDRA L. SGROI, JJ.

2008-11443

DECISION & ORDER

The People, etc., respondent,
v Aaron Nelson, appellant.

(Ind. No. 6891/01)

Lynn W. L. Fahey, New York, N.Y. (Alexis A. Ascher of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Jodi L. Mandel of counsel), for respondent.

Appeal by the defendant from a resentence of the Supreme Court, Kings County (Brennan, J.), imposed December 12, 2008, upon his conviction of robbery in the second degree, upon a jury verdict.

ORDERED that the resentence is affirmed.

Contrary to the defendant's contention, the resentencing court was not required to reconsider the propriety of the originally imposed term of imprisonment in view of the fact that the sentence would now include a period of postrelease supervision. The defendant did not overcome the presumption that the original sentencing court was aware, at the time it imposed the original sentence, that the sentence would include a period of postrelease supervision (*see People v Stewartson*, 63 AD3d 966). Furthermore, because the resentencing court was not required to reconsider the imprisonment component of the defendant's sentence, the defendant's contention that

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the court improvidently exercised its discretion in declining to order an updated presentence report is without merit (*see generally People v Kuey*, 83 NY2d 278, 282).

COVELLO, J.P., ANGIOLILLO, BALKIN and SGROI, 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