

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

D25721
W/kmg

_____AD3d_____

Argued - December 14, 2009

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

2007-06440

DECISION & ORDER

The People, etc., respondent,
v Shamah Ellis, appellant.

(Ind. No. 634/06)

Steven Banks, New York, N.Y. (Martin M. Lucente of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Rhea A. Grob of counsel; Xiaobo Chen on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Mangano, Jr., J.), rendered May 7, 2007, convicting him of attempted assault in the first degree, upon his plea of guilty, and imposing sentence. The appeal brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to suppress identification testimony.

ORDERED that the judgment is affirmed.

The record establishes that the defendant executed a written waiver of his right to appeal and that such waiver was knowingly, intelligently, and voluntarily made (*see People v Ramos*, 7 NY3d 737; *People v Love*, 67 AD3d 709; *People v Taylor*, 17 AD3d 491). The valid waiver of appeal forecloses appellate review of the defendant's claim regarding that branch of his omnibus motion which was to suppress identification testimony (*see People v Kemp*, 94 NY2d 831, 833; *People v Eimers*, 63 AD3d 1177, 1178; *People v Stanback*, 61 AD3d 785; *People v Russell*, 60 AD3d 706). Contrary to the defendant's contention, he was not sentenced as a predicate violent

felony offender. In any event, his claim in that regard is foreclosed by his valid waiver of the right to appeal (*see People v Campbell*, 38 AD3d 677, 678).

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 with a large initial "J".

James Edward Pelzer
Clerk of the Court