

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

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_____AD3d_____

Submitted - January 6, 2010

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
ARIEL E. BELEN
SHERI S. ROMAN, JJ.

2008-04495

DECISION & ORDER

The People, etc., respondent,
v Antonio Hearn, a/k/a Antonio S. Hearn, appellant.

(Ind. No. 2957-06)

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

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

Appeal by the defendant from a judgment of the County Court, Suffolk County (Gazzillo, J.), rendered April 24, 2008, convicting him of robbery in the first degree (five counts), upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The sentencing court properly denied the defendant's motion for leave to withdraw his plea of guilty. The right of a defendant to withdraw a previously-entered plea of guilty rests within the sound discretion of the sentencing court (*see People v Seeber*, 4 NY3d 780; *People v Mann*, 32 AD3d 865; *People v Kucharczyk*, 15 AD3d 595), the exercise of which will not be disturbed absent an improvident exercise of discretion (*see People v DeLeon*, 40 AD3d 1008). The defendant's plea of guilty was knowingly, voluntarily, and intelligently made (*see People v*

Fiumefreddo, 82 NY2d 536, 543; *cf. People v Callahan*, 80 NY2d 273, 283; *People v Harris*, 61 NY2d 9, 16), and the defendant's contentions to the contrary are without merit.

RIVERA, J.P., FLORIO, DICKERSON, BELEN and ROMAN, 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