

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

D26432
Y/prt

_____AD3d_____

Submitted - February 4, 2010

REINALDO E. RIVERA, J.P.
FRED T. SANTUCCI
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2008-05469
2009-02367

DECISION & ORDER

The People, etc., respondent,
v Devon Cooper, appellant.

(Ind. Nos. 2222/04, 2195/07)

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

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

Appeals by the defendant from (1) a judgment of the County Court, Suffolk County (Hinrichs, J.), rendered May 22, 2008, convicting him of attempted criminal sale of a controlled substance in the third degree under Indictment No. 2195/07, upon his plea of guilty, and imposing sentence, and (2) an amended judgment of the same court, also rendered May 22, 2008, revoking a sentence of probation previously imposed by the same court, upon his admission that he had violated a condition thereof, and imposing a sentence of imprisonment upon his previous conviction of attempted burglary in the second degree under Indictment No. 2222/04.

ORDERED that the judgment and the amended judgment are affirmed.

The defendant's contention that the County Court imposed, as part of a plea agreement, a term of imprisonment that was not agreed to at the plea proceeding is unpreserved for appellate review because he did not raise it at sentencing and did not move to withdraw his plea or vacate the judgment (*see People v Moore*, 4 AD3d 538). In any event, that contention is without

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merit (*see generally People v Jenkins*, 11 NY3d 282, 288-289). The defendant was sentenced “in full accordance with the plea agreement” (*People v Davis*, 56 AD3d 794, 795).

RIVERA, J.P., SANTUCCI, ENG and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court