

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

D26609
O/kmg

_____AD3d_____

Submitted - March 3, 2010

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
PLUMMER E. LOTT
SANDRA L. SGROI, JJ.

2006-06745
2006-06746

DECISION & ORDER

The People, etc., respondent,
v Jose Oquendo, appellant.

(Ind. No. 2760-05, 473A-06)

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

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Ronnie Jane Lamm of counsel), for respondent.

Appeals by the defendant from two judgments of the County Court, Suffolk County (Mullen, J.), both rendered June 8, 2006, convicting him of assault in the first degree under Indictment No. 2760-05, and conspiracy in the second degree under Indictment No. 473A-06, upon his pleas of guilty, and imposing sentences.

ORDERED that the judgments are affirmed.

The record of the plea proceeding reveals that the defendant pleaded guilty knowingly, voluntarily, and intelligently (*see People v McPherson*, 60 AD3d 872). Insofar as the defendant's complaints about counsel rest on matters dehors the record, they are not reviewable on direct appeal (*see People v Yagudaev*, 70 AD3d 984). To the extent that the record permits review of the defendant's claim that he was denied the effective assistance of counsel, the defendant received meaningful representation (*see Strickland v Washington*, 466 US 668; *People v Henry*, 95 NY2d 563, 564; *People v Baldi*, 54 NY2d 137, 147).

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The defendant's claims regarding the content of the presentence report and the conduct of the court are not preserved for appellate review (*see* CPL 470.05[2]) and, in any event, are without merit.

The sentences imposed were not excessive (*see People v Suitte*, 90 AD2d 80; *People v Kazepis*, 101 AD2d 816).

FISHER, J.P., COVELLO, LOTT 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