

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

D26633
G/kmg

_____AD3d_____

Argued - March 1, 2010

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
CHERYL E. CHAMBERS, JJ.

2008-08005

DECISION & ORDER

The People, etc., respondent,
v William Johnson, appellant.

(Ind. No. 229/07)

Lynn W. L. Fahey, New York, N.Y. (Winston McIntosh of counsel), for appellant.

Daniel M. Donovan, Jr., District Attorney, Staten Island, N.Y. (Morrie I. Kleinbart of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Richmond County (Rooney, J.), rendered August 14, 2008, convicting him of assault in the first degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that his plea of guilty was not knowing and voluntary because it was based upon a mistaken belief that he was a second felony offender is unpreserved for appellate review since he did not move to withdraw his plea on that basis (*see People v Clarke*, 93 NY2d 904, 906; *People v Lopez*, 71 NY2d 662, 665-666; *People v Bolton*, 63 AD3d 1087; *People v Antoine*, 59 AD3d 560). In any event, the Supreme Court gave the defendant correct information regarding his sentencing exposure, and the defendant's plea of guilty was knowingly, intelligently, and voluntarily entered after the court fully advised him of the consequences of his plea during a complete plea allocution (*see People v Garcia*, 92 NY2d 869, 870-871; *People v Mitchell*, 69 AD3d 883; *People v Turner*, 23 AD3d 503, 503-504; *People v Fulmore*, 189 AD2d 823, 824). Further, the defendant failed to establish that he was deprived of the effective assistance of counsel with respect to his plea of guilty. Under the circumstances of this case, the defendant received an advantageous

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plea, and nothing in the record casts doubt on the defense counsel's effectiveness (*see People v Hughes*, 62 AD3d 1026, 1026-1027; *People v Grimes*, 35 AD3d 882, 883).

SKELOS, J.P., SANTUCCI, ANGIOLILLO and CHAMBERS, 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