

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

D27236
O/kmg

_____AD3d_____

Submitted - December 31, 2009

A. GAIL PRUDENTI, P.J.
STEVEN W. FISHER
JOSEPH COVELLO
JOHN M. LEVENTHAL
LEONARD B. AUSTIN, JJ.

2007-04634

DECISION & ORDER

The People, etc., respondent,
v Albert Boghdadi, appellant.

(Ind. No. 8744/05)

Lynn W. L. Fahey, New York, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Leonard Koerner and Francis F. Caputo of counsel), for respondent.

Appeal by the defendant from an amended judgment of the Supreme Court, Kings County (Holdman, J.), rendered April 16, 2007, revoking a sentence of probation previously imposed by the same court, upon a finding that he had violated a condition thereof, upon his admission, and imposing a sentence of imprisonment upon his previous conviction of criminal possession of a weapon in the third degree.

ORDERED that the amended judgment is affirmed.

As the People correctly concede, the defendant's waiver of the right to appeal was not valid (*see People v Murray*, 68 AD3d 896; *People v Cruz*, 54 AD3d 962, 963; *People v Hurd*, 44 AD3d 791, 792) and does not foreclose his current claim.

Nevertheless, despite being informed of the sentence that he was to receive, the defendant admitted to violating a condition of his probation and, therefore, has no basis to complain of the sentence imposed (*see People v Delpesce*, 68 AD3d 1131; *People v Grzywaczewski*, 61 AD3d

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699, 700; *People v Trias*, 50 AD3d 828, 828-829; *People v Kazepis*, 101 AD2d 816). In any event, the sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

PRUDENTI, P.J., FISHER, COVELLO, LEVENTHAL and AUSTIN, 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