

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

D27268
W/hu

_____AD3d_____

Submitted - April 21, 2010

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
RUTH C. BALKIN
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2008-04929
2008-09260

DECISION & ORDER

The People, etc., respondent,
v Rudolph Pook, appellant.

(Ind. Nos. 3736/02, 3148/05)

Victor Schurr, White Plains, N.Y., for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano and Merri Turk Lasky of counsel; Lorrie A. Zinno on the brief), for respondent.

Appeals by the defendant from (1) an amended judgment of the Supreme Court, Queens County (Wong, J.), rendered May 15, 2008, revoking a sentence of probation previously imposed by the same court (Kron, J.), upon a finding that he had violated a condition thereof, after a hearing, and imposing a sentence of imprisonment upon his previous conviction of assault in the second degree under Indictment No. 3736/02, and (2) a judgment of the same court (McGann, J.), rendered September 24, 2008, convicting him of rape in the second degree under Indictment No. 3148/05, upon his plea of guilty, and imposing sentence.

ORDERED that the amended judgment and the judgment are affirmed.

The defendant's waivers of his right to appeal were knowing, voluntary, and intelligent (*see People v Ramos*, 7 NY3d 737, 738; *People v Lopez*, 6 NY3d 248, 255; *People v Seaberg*, 74 NY2d 1, 9) and, thus, preclude review of his claim that the sentence imposed upon his violation of probation was excessive (*see People v Burton*, 69 AD3d 644; *People v Kimbrough*, 25 AD3d 810, 810-811). Furthermore, since the defendant was informed that a maximum sentence could be

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imposed if he failed to complete the sexual offender's counseling program, appellate review of his contention that the enhanced sentence imposed upon his conviction of rape in the second degree was excessive is also precluded by that waiver (*see People v Bullock*, 54 AD3d 959; *People v Ruiz*, 48 AD3d 834; *People v Greene*, 13 AD3d 647, 648).

FISHER, J.P., COVELLO, BALKIN, LEVENTHAL and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court

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