

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

D27271
W/prt

_____AD3d_____

Submitted - April 21, 2010

PETER B. SKELOS, J.P.
MARK C. DILLON
DANIEL D. ANGIOLILLO
RANDALL T. ENG
SANDRA L. SGROI, JJ.

2009-07427

DECISION & ORDER

The People, etc., respondent,
v Floyd Wagstaff, appellant.

(Ind. No. 08-01570)

Michael G. Paul, New City, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Richard Longworth Hecht and Anthony J. Servino of counsel; Justin Tolbert on the brief), for respondent.

Appeal by the defendant from a judgment of the County Court, Westchester County (Molea, J.), rendered July 9, 2009, convicting him of criminal possession of a weapon in the second degree (two counts) and reckless endangerment in the first degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that he was deprived of the effective assistance of counsel is not properly before this Court since it is based upon matter that is outside the record (*see People v Ali*, 55 AD3d 919; *People v Drago*, 50 AD3d 920; *People v LeGrady*, 50 AD3d 1059, 1060; *People v Ross*, 41 AD3d 870, 871; *People v Villacreses*, 12 AD3d 624, 626).

Since the defendant pleaded guilty with the understanding that he would receive the sentence which was thereafter actually imposed, he has no basis to now complain that the sentence imposed was excessive (*see People v De Alvarez*, 59 AD3d 732; *People v Fanelli*, 8 AD3d 296;

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People v Mejia, 6 AD3d 630, 631; *People v Kazepis*, 101 AD2d 816). In any event, the sentence imposed was not excessive (see *People v Suitte*, 90 AD2d 80).

SKELOS, J.P., DILLON, ANGIOLILLO, ENG 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