

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

D27287  
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Submitted - April 21, 2010

REINALDO E. RIVERA, J.P.  
ANITA R. FLORIO  
HOWARD MILLER  
CHERYL E. CHAMBERS  
SHERI S. ROMAN, JJ.

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2007-02342

DECISION & ORDER

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

(Ind. No. 06-00486)

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Ariana J. Antonelli, New Windsor, N.Y., for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (Elizabeth L. Guinup and Andrew R. Kass of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (DeRosa, J.), rendered January 11, 2007, 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 valid waiver of his right to appeal precludes review of his challenge to the factual adequacy of his plea allocution (*see People v Chavez*, 71 AD3d 781; *People v Rufa*, 57 AD3d 697).

To the extent that the defendant contends that his plea was not knowing or voluntary, his claim is unpreserved for appellate review since he failed to move to withdraw his plea (*see CPL 470.05[2]*; *People v Toxey*, 86 NY2d 725; *People v Broadwater*, 69 AD3d 643; *People v Elcine*, 43 AD3d 1176). The narrow exception to the preservation rule, which arises when the defendant's plea recitation of the facts underlying the crime casts significant doubt on the defendant's guilt (*see People*

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*v Lopez*, 71 NY2d 662), is inapplicable in this case. In any event, any alleged defects in the factual allocation do not constitute grounds for setting aside the plea since “there is no suggestion that the plea of guilty was improvident or baseless” (*People v Guerrero*, 307 AD2d 935, 936 [internal quotation marks omitted]; see *People v Winbush*, 199 AD2d 447, 448).

RIVERA, J.P., FLORIO, MILLER, CHAMBERS and ROMAN, 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