

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

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_____AD3d_____

Submitted - May 7, 2010

WILLIAM F. MASTRO, J.P.
FRED T. SANTUCCI
CHERYL E. CHAMBERS
SHERI S. ROMAN, JJ.

2003-02951

DECISION & ORDER

The People, etc., respondent,
v Eladio Pena, appellant.

(Ind. No. 4673/01)

Jose A. Muniz, P.C., New York, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Ann Bordley of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (J. Goldberg, J.), rendered November 20, 2002, convicting him of murder in the second degree and rape in the first degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant knowingly, voluntarily, and intelligently waived his right to appeal (*see People v Ramos*, 7 NY3d 737; *People v Lopez*, 6 NY3d 248; *People v Seaberg*, 74 NY2d 1, 11). The defendant's valid waiver of his right to appeal forecloses appellate review of his challenge to the Supreme Court's suppression determination (*see People v Kemp*, 94 NY2d 831, 833; *People v Rossetti*, 55 AD3d 637, 638; *People v DeAngelo*, 40 AD3d 656; *People v Munford*, 37 AD3d 855; *People v Smith*, 35 AD3d 769; *People v Peoples*, 34 AD3d 503; *People v Campbell*, 24 AD3d 463). Moreover, under the totality of the circumstances presented in this record, we cannot say that the

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defendant was deprived of the effective assistance of counsel (*see People v Baldi*, 54 NY2d 137, 147).

MASTRO, J.P., SANTUCCI, 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