

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

D27682
C/hu

_____AD3d_____

Argued - May 3, 2010

STEVEN W. FISHER, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
ARIEL E. BELEN, JJ.

2008-00329

DECISION & ORDER

The People, etc., respondent,
v Mohammed Shoman, appellant.

(Ind. No. 1392/04)

Steven Banks, New York, N.Y. (Kristina Schwarz of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Camille O'Hara Gillespie of counsel; Xiaobo Chen on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (DiMango, J.), rendered December 19, 2007, convicting him of burglary in the second degree and petit larceny, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The record is insufficient to demonstrate that the defendant knowingly, voluntarily, and intelligently waived his right to appeal (*see People v DeSimone*, 80 NY2d 273, 283; *People v Gladden*, 267 AD2d 400; *People v Dongo*, 244 AD2d 353). However, since the defendant pleaded guilty with the express understanding that if he failed to complete a drug treatment program, the Supreme Court would impose the enhanced sentence of which he now complains, he has no basis to now complain that his sentence was excessive (*see People v Williams*, 70 AD3d 733; *People v Billups*, 63 AD3d 750; *see also People v Kazepis*, 101 AD2d 816). In any event, under the circumstances, the sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

FISHER, J.P., DICKERSON, ENG and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

June 1, 2010

PEOPLE v SHOMAN, MOHAMMED