

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

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_____AD3d_____

Submitted - May 25, 2010

STEVEN W. FISHER, J.P.
FRED T. SANTUCCI
HOWARD MILLER
PLUMMER E. LOTT, JJ.

2007-11338

DECISION & ORDER

The People, etc., respondent,
v David Albert, appellant.

(Ind. No. 1690/06)

Sergey Mikhlin, Brooklyn, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Tammy J. Smiley and Donald Berk of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Berkowitz, J.), rendered November 19, 2007, convicting him of robbery in the first degree, assault in the second degree, and criminal possession of a weapon in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that he was denied the right to be present during his trial. However, the defendant forfeited his right to be present at trial by refusing to appear in court after being notified that the trial would proceed without him even if he failed to appear (*see People v Parker*, 57 NY2d 136, 141; *People v Dhan*, 271 AD2d 452, 453; *People v Taylor*, 233 AD2d 534). Contrary to the defendant's contention, the County Court made reasonable efforts to ascertain that his refusal was voluntary. Accordingly, the County Court properly determined that the trial should

proceed in the defendant's absence (*see People v Constat*, 59 AD3d 729, 730; *People v Dhan*, 271 AD2d at 453).

FISHER, J.P., SANTUCCI, MILLER 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