

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

D27987
W/kmg

_____AD3d_____

Argued - May 10, 2010

MARK C. DILLON, J.P.
RUTH C. BALKIN
ARIEL E. BELEN
PLUMMER E. LOTT, JJ.

2008-01709

DECISION & ORDER

The People, etc., respondent,
v Anthony Paccione, appellant.

(Ind. No. 2971/97)

Lynn W. L. Fahey, New York, N.Y. (Warren S. Landau of counsel), for appellant.

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

Appeal by the defendant from an order of the Supreme Court, Kings County (Chambers, J.), dated February 4, 2008, which granted the People's application, in effect, to vacate an award of credit for time served by him in satisfaction of a sentence imposed in connection with his conviction on an unrelated federal crime, in mitigation of the sentence imposed by the same court upon his conviction of robbery in the first degree, robbery in the second degree, grand larceny in the second degree, burglary in the second degree, and tampering with physical evidence, upon a jury verdict.

ORDERED that the order is reversed, on the law, and the matter is remitted to the Supreme Court, Kings County, for further proceedings consistent herewith.

We reverse the order dated February 4, 2008, which, in effect, resentenced the defendant, for the reasons set forth in our decision on a companion appeal (*see People v Paccione*, _____AD3d_____ [Appellate Division Docket No. 2008-01707; decided herewith]). Accordingly, the matter must be remitted to the Supreme Court, Kings County, for further

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proceedings on the People's application to vacate an award of credit for time served, at which the defendant shall be given the opportunity to be present.

DILLON, J.P., BALKIN, BELEN and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court