

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

D28086
G/kmg

_____AD3d_____

Submitted - June 16, 2010

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2009-09286

DECISION & ORDER

The People, etc., respondent,
v Mark Hollingsworth, appellant.

(S.C.I. No. 81/09)

Del Atwell, East Hampton, N.Y., for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Kirsten A. Rappleyea of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Dolan, J.), rendered September 15, 2009, convicting him of assault in the third degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

Since the defendant failed to move to withdraw his plea, his contention that his plea was not knowingly, voluntarily, and intelligently entered is unpreserved for appellate review (*see People v Antoine*, 59 AD3d 560; *People v Castiollo-Cordero*, 54 AD3d 1054). In any event, his plea of guilty was knowingly, voluntarily, and intelligently entered (*see People v Fiumefreddo*, 82 NY2d 536, 543; *People v Thomas*, 63 AD3d 642; *People v Elkin*, 154 AD2d 936).

The defendant was afforded the effective assistance of counsel (*see Strickland v Washington*, 466 US 668, 687; *People v Baldi*, 54 NY2d 137, 147; *People v Brooks*, 36 AD3d 929, 930; *People v Grimes*, 35 AD3d 882, 883).

June 29, 2010

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Since the defendant pleaded guilty with the understanding that he would receive the sentence which was thereafter actually imposed, he has no basis now to complain that the sentence was excessive (*see People v De Alvarez*, 59 AD3d 732; *People v Fanelli*, 8 AD3d 296; *People v Mejia*, 6 AD3d 630, 631; *People v Kazepis*, 101 AD2d 816). In any event, the sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

RIVERA, J.P., FLORIO, DICKERSON, CHAMBERS and LOTT, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court