

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

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G/cb

_____AD3d_____

Submitted - September 17, 2008

STEVEN W. FISHER, J.P.
ROBERT A. LIFSON
JOSEPH COVELLO
RUTH C. BALKIN
ARIEL E. BELEN, JJ.

2007-06293

DECISION & ORDER

The People, etc., respondent,
v Patrick Kegel, appellant.

(S.C.I. No. 1020/07)

Arza Feldman, Uniondale, N.Y. (Steven A. Feldman of counsel), for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Tammy J. Smiley of counsel;
Matthew C. Frankel on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Jaeger, J.), rendered June 14, 2007, convicting him of robbery in the third degree (four counts), upon his plea of guilty, and imposing consecutive terms of imprisonment of one to three years and restitution.


ORDERED that the judgment is reversed, on the law, the sentence is vacated, and the matter is remitted to the Supreme Court, Nassau County, for further proceedings consistent herewith.

Although a court is free to reserve the right to order restitution as part of a plea bargain, the plea minutes in this case do not indicate that the plea of guilty was negotiated with terms that included restitution (*see People v Henderson*, 44 AD3d 873, 873-874). Accordingly, at sentencing, the defendant should have been given an opportunity either to withdraw his plea or to accept the enhanced sentence of restitution and a prison sentence (*see People v Toms*, 293 AD2d 768,

769; *People v Watson*, 287 AD2d 889, 890; *People v Cisco*, 208 AD2d 643; *People v Cowan*, 168 AD2d 509). Since the defendant was not afforded this opportunity, we remit the matter for that purpose, or for the imposition of the agreed-upon sentence.

FISHER, J.P., LIFSON, COVELLO, BALKIN and BELEN, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court