

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

478

KA 15-00651

PRESENT: CARNI, J.P., LINDLEY, CURRAN, TROUTMAN, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KEION PETERSON, DEFENDANT-APPELLANT.

REEVE BROWN PLLC, ROCHESTER (GUY A. TALIA OF COUNSEL), FOR
DEFENDANT-APPELLANT.

GREGORY J. MCCAFFREY, DISTRICT ATTORNEY, GENESEO (JOSHUA J. TONRA OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Livingston County Court (Robert B. Wiggins, J.), rendered February 17, 2015. The judgment convicted defendant upon his plea of guilty of criminal sale of a controlled substance in the third degree.

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law, the plea is vacated, indictment No. 2014-042 is reinstated and the matter is remitted to Livingston County Court for further proceedings on indictment Nos. 2014-042 and 2014-172.

Memorandum: Defendant appeals from a judgment entered in Livingston County convicting him upon a plea of guilty of criminal sale of a controlled substance in the third degree (Penal Law § 220.39 [1]). The plea satisfied another indictment pending against defendant in Livingston County (indictment No. 2014-042). Pursuant to the plea agreement, County Court sentenced defendant to a determinate term of imprisonment that was to run concurrently with a 10-year sentence previously imposed on defendant in Monroe County for criminal possession of a weapon in the second degree. We later reversed the Monroe County judgment and dismissed the indictment (*People v Peterson*, 159 AD3d 1588 [4th Dept 2018]). Defendant now contends, and the People correctly concede, that, inasmuch as his plea in Livingston County was induced by the promise of a concurrent sentence, which is no longer possible, the judgment must be reversed and the plea vacated (see *People v Rowland*, 8 NY3d 342, 345 [2007]; *People v Pichardo*, 1 NY3d 126, 129 [2003]; cf. *People v Walker*, 148 AD3d 1569, 1569 [4th Dept 2017], lv denied 29 NY3d 1088 [2017]; *People v Kalinowski*, 84 AD3d 1739, 1741 [4th Dept 2011]; see also *People v Williams*, 79 AD3d 1653, 1655 [4th Dept 2010], affd 17 NY3d 834 [2011]). This will result in the reinstatement of indictment No. 2014-042, which was satisfied by defendant's plea (see CPL 470.55 [2]; see generally

People v Green, 56 AD3d 1238, 1239 [4th Dept 2008]).

Defendant further contends that the court erred in determining that indictment No. 2014-042 was supported by legally sufficient evidence and that the grand jury proceedings in that case were not defective. That contention is not properly before us on this appeal.

Entered: August 20, 2020

Mark W. Bennett
Clerk of the Court