

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

1254

KA 14-02107

PRESENT: CARNI, J.P., LINDLEY, DEJOSEPH, TROUTMAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

GERALD L. SMITH, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JAMES A. HOBBS OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (SCOTT MYLES OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Vincent M. Dinolfo, J.), rendered August 21, 2014. The judgment convicted defendant, upon his plea of guilty, of burglary in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law, the plea is vacated, and the matter is remitted to Monroe County Court for further proceedings on the indictment.

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of burglary in the second degree (Penal Law § 140.25 [2]). Defendant was sentenced, as a first felony offender, to a six-year term of incarceration and a five-year period of postrelease supervision. Defendant contends that his plea was not knowing, voluntary, and intelligent because he was not advised of the direct sentencing consequences of his plea. We agree.

"While a trial court has no obligation to explain to defendants who plead guilty the possibility that collateral consequences may attach to their criminal convictions, the court must advise a defendant of the direct consequences of the plea" (*People v Catu*, 4 NY3d 242, 244 [2005]). Defendant failed to preserve for our review his contention that County Court failed to fulfill its obligation to advise him at the time of the plea that the sentence imposed would include a period of postrelease supervision (see CPL 470.05 [2]), and we decline to exercise our power to review that contention as a matter of discretion in the interest of justice (see CPL 470.15 [3] [c]). Nevertheless, the record supports defendant's further contention that he was not advised that the sentence to which he agreed when pleading guilty was fixed without regard to the outcome of the second violent felony offender hearing, and thus that he was not properly advised of the direct consequences of the plea (see *Catu*, 4 NY3d at 244).

Consequently, we reverse the judgment, vacate defendant's plea, and remit the matter to County Court for further proceedings on the indictment.

Entered: November 17, 2017

Mark W. Bennett
Clerk of the Court