

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

1125

KA 13-00624

PRESENT: CENTRA, J.P., FAHEY, SCONIERS, WHALEN, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

SHARON L. FRYSSINGER, DEFENDANT-APPELLANT.

RICHARD C. ROXIN, CANANDAIGUA, FOR DEFENDANT-APPELLANT.

BROOKS T. BAKER, DISTRICT ATTORNEY, BATH (JAMES P. MILLER OF COUNSEL),
FOR RESPONDENT.

Appeal from a judgment of the Steuben County Court (Peter C. Bradstreet, J.), rendered October 19, 2012. The judgment convicted defendant, upon her plea of guilty, of unlawfully dealing with a child in the first degree.

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

Memorandum: Defendant appeals from a judgment convicting her upon her plea of guilty of unlawfully dealing with a child in the first degree (Penal Law § 260.20 [2]). As we concluded on the appeal of defendant's husband and codefendant (*People v Frysinger*, 111 AD3d 1397), County Court erred in denying defendant's motion to vacate her guilty plea insofar as it challenged the factual sufficiency of the plea allocution (*see People v Lopez*, 71 NY2d 662, 665). "Defendant was expressly charged with the act of providing alcoholic beverages to persons under 21 years of age, but during the brief factual colloquy at the plea proceeding [s]he never admitted that [s]he provided alcohol" (*Frysinger*, 111 AD3d at 1398). In view of our decision, we do not address defendant's remaining contentions.

Entered: November 14, 2014

Frances E. Cafarell
Clerk of the Court