

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

998

KA 09-01744

PRESENT: SCUDDER, P.J., SMITH, LINDLEY, VALENTINO, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAMIE TRAVERSO, JR., ALSO KNOWN AS JAIME,
DEFENDANT-APPELLANT.

DONALD R. GERACE, UTICA, FOR DEFENDANT-APPELLANT.

SCOTT D. MCNAMARA, DISTRICT ATTORNEY, UTICA (STEVEN G. COX OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Oneida County Court (Barry M. Donalty, J.), rendered November 6, 2008. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a controlled substance in the fifth degree.

It is hereby ORDERED that the case is held, the decision is reserved and the matter is remitted to Oneida County Court for further proceedings in accordance with the following memorandum: Defendant appeals from a judgment convicting him, upon his plea of guilty, of criminal possession of a controlled substance in the fifth degree (Penal Law § 220.06 [1]). We agree with defendant, a noncitizen, that County Court failed to advise him of the deportation consequences of his felony plea, as required by *People v Peque* (22 NY3d 168). We therefore hold the case, reserve decision and remit the matter to County Court to afford defendant the opportunity to move to vacate his plea based upon a showing that there is a "reasonable probability" that he would not have pleaded guilty had he known that he faced the risk of being deported as a result of the plea (*id.* at 176; see *People v Charles*, 117 AD3d 1073, 1074).

Entered: October 9, 2015

Frances E. Cafarell
Clerk of the Court