

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

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KA 15-01148

PRESENT: WHALEN, P.J., PERADOTTO, CARNI, LINDLEY, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

THOMAS R.O., DEFENDANT-APPELLANT.
(APPEAL NO. 2.)

FRANK POLICELLI, 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 (Michael L. Dwyer, J.), rendered August 20, 2013. The judgment convicted defendant, upon his plea of guilty, of robbery in the first degree.

It is hereby ORDERED that the judgment so appealed from is reversed as a matter of discretion in the interest of justice, the conviction is vacated, defendant is adjudicated a youthful offender, and the matter is remitted to Oneida County Court for sentencing.

Same memorandum as in *People v Thomas R.O.* ([appeal No. 1] ___ AD3d ___ [Feb. 11, 2016]).

All concur except CARNI and DEJOSEPH, JJ., who dissent and vote to affirm in accordance with the same dissenting memorandum as in *People v Thomas R.O.* ([appeal No. 1] ___ AD3d ___ [Feb. 11, 2016]).

Entered: February 11, 2016

Frances E. Cafarell
Clerk of the Court