

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

541

KA 19-00703

PRESENT: CENTRA, J.P., PERADOTTO, CURRAN, WINSLOW, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOHN CROSBY, DEFENDANT-APPELLANT.

LINDA M. CAMPBELL, SYRACUSE, 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 June 20, 2018. The judgment convicted defendant upon a jury verdict of attempted assault in the second 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: On appeal from a judgment convicting him upon a jury verdict of attempted assault in the second degree (Penal Law §§ 110.00, 120.05 [7]), defendant contends, inter alia, that County Court erred in denying his pro se motion to dismiss the indictment on the ground that he was not afforded an opportunity to testify before the grand jury pursuant to CPL 190.50 (5) (a). The People argue that defendant waived that contention by failing to make a timely motion for dismissal on that ground (see CPL 190.50 [5] [c]; *People v Hibbard*, 27 AD3d 1196, 1196 [4th Dept 2006], *lv denied* 7 NY3d 790 [2006]). The court, however, did not state on the record its reasons for denying defendant's motion to dismiss the indictment, and we cannot say whether it denied the motion on the basis of timeliness (see generally *People v Concepcion*, 17 NY3d 192, 198 [2011]; *People v LaFontaine*, 92 NY2d 470, 474 [1998], *rearg denied* 93 NY2d 849 [1999]). We therefore hold the case, reserve decision, and remit the matter to County Court to state for the record its reasons for denying defendant's motion.

Entered: June 17, 2021

Mark W. Bennett
Clerk of the Court