

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Submitted - February 13, 2009

WILLIAM F. MASTRO, J.P.
JOSEPH COVELLO
RANDALL T. ENG
JOHN M. LEVENTHAL, JJ.

2008-00806

DECISION & ORDER

The People, etc., respondent,
v Rufus Gibbs, appellant.

(Ind. No. 07-00364)

Mark Diamond, New York, N.Y., for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (Robert H. Middlemiss and Andrew R. Kass of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (DeRosa, J.), rendered January 17, 2008, convicting him of robbery in the first degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is reversed, on the law, the plea of guilty is vacated, and the matter is remitted to the County Court, Orange County, for further proceedings.

The failure of the County Court to advise the defendant, at the time of the plea, that his sentence would include a period of postrelease supervision requires reversal of the judgment of conviction (*see People v Hill*, 9 NY3d 189, 191-192; *People v Louree*, 8 NY3d 541, 544-545; *People v Catu*, 4 NY3d 242, 245). Accordingly, we reverse the judgment, vacate the plea, and remit the matter to the County Court, Orange County, for further proceedings (*see People v Borrego*, 59 AD3d 456; *People v Stewart*, 57 AD3d 581; *People v Kirksey*, 56 AD3d 573; *People v Bernard*, 53 AD3d 586, 586-587; *People v Cook*, 49 AD3d 777, 777-778; *People v Lipscombe*, 49 AD3d 781, 782; *People v Thompson*, 47 AD3d 648).

April 7, 2009

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The defendant's remaining contentions are without merit.

MASTRO, J.P., COVELLO, ENG and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court