

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

D23798
C/hu

_____AD3d_____

Submitted - May 14, 2009

STEVEN W. FISHER, J.P.
MARK C. DILLON
JOSEPH COVELLO
THOMAS A. DICKERSON, JJ.

2003-05792

DECISION & ORDER

The People, etc., respondent,
v Olsen Key, appellant.

(Ind. No. 1755/02)

Michael A. Fiechter, Bellmore, N.Y., for appellant, and appellant pro se.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Robert A. Schwartz and
Valentina M. Tejera of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County
(Weinberg, J.), rendered May 28, 2003, convicting him of kidnapping in the second degree, assault
in the first degree (two counts), and criminal possession of a weapon in the third 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, Nassau County, for further proceedings.

The defendant contends that his plea of guilty was not knowing, voluntary, and
intelligent inasmuch as the County Court did not advise him when he pleaded guilty that postrelease
supervision would be a part of his sentence (*see People v Boyd*, 12 NY3d 390; *People v Louree*, 8
NY3d 541, 544-545; *People v Catu*, 4 NY3d 242, 245; *People v Borrego*, 59 AD3d 456). The
People concede that reversal of the judgment of conviction is required, and we agree. We note that
defense counsel's statement regarding postrelease supervision during the plea negotiations several
days before the defendant pleaded guilty cannot substitute for the court's duty to ensure, at the time
the plea is entered, that the defendant is aware of the terms of the plea (*see People v Garcia*, 61

July 28, 2009

PEOPLE v KEY, OLSEN

Page 1.

AD3d 475), especially in light of the fact that it was not stated that postrelease supervision was required to be part of any sentence with a determinate prison term.

In light of our determination, the defendant's remaining contentions, including those raised in his supplemental pro se brief, have been rendered academic.

FISHER, J.P., DILLON, COVELLO and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court