

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

D25240  
C/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - November 4, 2009

REINALDO E. RIVERA, J.P.  
JOSEPH COVELLO  
DANIEL D. ANGIOLILLO  
JOHN M. LEVENTHAL  
SHERI S. ROMAN, JJ.

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2007-10094

DECISION & ORDER

The People, etc., respondent,  
v Reginald Mobley, appellant.

(Ind. No. 07-00340)

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Steven A. Feldman, Uniondale, N.Y. (Arza Feldman of counsel), for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (Elizabeth L. Guinup and Andrew R. Kass of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (Freehill, J.), rendered October 4, 2007, convicting him of criminal sale of a controlled substance in the third degree, upon his plea of guilty, and imposing sentence.

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

In order to be valid, a plea of guilty must be knowing, voluntary, and intelligent (*see People v Fiumefreddo*, 82 NY2d 536, 543). Here, although the defendant's plea allocution clearly implicated an agency defense, the defendant was not advised that he had a possible defense to the charges (*see People v Ortega*, 53 AD3d 696, 696–697; *People v Wolcott*, 27 AD3d 774, 775), and he was never asked whether he had discussed possible defenses with his attorney (*cf. People v Phillips*, 28 AD3d 939, 940). Indeed, the court made no further inquiries into the facts and circumstances despite the defendant's statements which raised the possibility of an agency defense.

December 1, 2009

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Under these circumstances, the defendant's plea of guilty was not knowing, voluntary, and intelligent (see *People v Rhodes*, 62 AD3d 815).

RIVERA, J.P., COVELLO, ANGIOLILLO, LEVENTHAL and ROMAN, 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