

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

D25866  
G/kmg

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Argued - December 17, 2009

A. GAIL PRUDENTI, P.J.  
WILLIAM F. MASTRO  
ANITA R. FLORIO  
LEONARD B. AUSTIN, JJ.

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2008-02338  
2008-02339

DECISION & ORDER

The People, etc., respondent,  
v Angel Molina, appellant.

(Ind. Nos. 468/04, 2693/06)

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Lynn W. L. Fahey, New York, N.Y. (Kendra L. Hutchinson of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,  
Jeanette Lifschitz, and Howard McCallum of counsel), for respondent.

Appeals by the defendant from (1) a judgment of the Supreme Court, Queens County (Kohm, J.), rendered February 20, 2008, convicting him of burglary in the second degree under Indictment No. 468/04, upon his plea of guilty, and imposing sentence, and (2) a judgment of the same court, also rendered February 20, 2008, convicting him of bail jumping in the second degree under Indictment No. 2693/06, upon a jury verdict, and imposing sentence.

ORDERED that the matter is remitted to the Supreme Court, Queens County, to hear and report on the defendant's motion to withdraw his plea of guilty under Indictment No. 468/04, on which motion the defendant's appellate counsel shall represent him, and the appeals are held in abeyance in the interim. The Supreme Court, Queens County, is to file its report with all convenient speed.

The Supreme Court improvidently exercised its discretion in denying, without a hearing, the defendant's motion to withdraw his plea of guilty to burglary in the second degree in satisfaction of the charges brought against him under Indictment No. 468/04. Where a statement by a defendant "calls into question the voluntariness of [a guilty] plea," the trial court has "a duty to

inquire further to ensure that defendant's guilty plea is knowing and voluntary" (*People v Lopez*, 71 NY2d 662, 666). Contrary to the People's contention, the record of the subject plea proceeding does not refute the defendant's claim that he received incorrect information from his attorney regarding his sentencing exposure (*see People v Fitzgerald*, 56 AD3d 811, 814). Moreover, the court never itself apprised the defendant of the possible sentence he faced if convicted after a trial (*id.* at 813; *cf. People v Eschenberg*, 275 AD2d 719). Thus, a hearing is required to determine whether the defendant's plea of guilty was knowingly and voluntarily entered (*see People v Fitzgerald*, 56 AD3d at 813-814; *People v Williams*, 65 AD2d 521; *see also People v Alexander*, 97 NY2d 482, 485-486).

Accordingly, we remit the matter to the Supreme Court, Queens County, to hear and report on the defendant's motion to withdraw his plea of guilty, on which motion the defendant shall be represented by his appellate counsel (*see People v Bedoya*, 53 AD3d 621; *People v Davis*, 232 AD2d 652). We express no opinion as to the merits of the defendant's motion and we decide no other issues at this time.

PRUDENTI, P.J., MASTRO, FLORIO and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court