

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

D25884
H/kmg

_____AD3d_____

Submitted - November 18, 2009

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

2008-04924

DECISION & ORDER

The People, etc., respondent,
v Derwin Lindsay, appellant.

(Ind. No. 620/08)

Michael A. Fiechter, Bellmore, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Tammy J. Smiley of counsel;
Michael Maffei on the brief), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Reilly, J.), rendered May 7, 2008, convicting him of attempted robbery in the first 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, Nassau County, for further proceedings in accordance herewith.

At the time of the plea, the County Court failed to advise the defendant that his sentence would include a mandatory period of postrelease supervision and certain restitution.

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, *cert denied* _____US_____, 128 S Ct 2430; *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

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County Court, Nassau County, for further proceedings (*see People v Curry*, 65 AD3d 1373; *People v Borrego*, 59 AD3d 456; *People v Stewart*, 57 AD3d 581).

In light of our determination, the defendant's contention concerning the County Court's failure to advise him of restitution at the time of the plea has been rendered academic (*cf. People v Fields*, 193 AD2d 814).

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, flowing style.

James Edward Pelzer
Clerk of the Court