

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

D30421
W/kmb

_____AD3d_____

Submitted - February 7, 2011

REINALDO E. RIVERA, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
L. PRISCILLA HALL, JJ.

2008-10690

DECISION & ORDER

The People, etc., respondent,
v Luis M. Figueroa, also known as
Louis M. Figueroa, appellant.

(Ind. No. 93/08)

Salvatore C. Adamo, New York, N.Y., for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Bridget Rahilly Steller of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Dolan, J.), rendered October 30, 2008, convicting him of murder in the second degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is modified, on the law, by vacating the sentence imposed thereon; as so modified, the judgment is affirmed, and the matter is remitted to the County Court, Dutchess County, for further proceedings in accordance herewith.

As correctly conceded by the People, the sentence imposed by the County Court, upon the defendant's plea of guilty, was inconsistent with the sentence promised by the County Court at the plea proceeding. The County Court had promised the defendant that he would receive, at most, a determinate sentence of 18 years of incarceration; however, such a sentence would have been illegal (*see* Penal Law § 70.00[1], [3][a][i]). The defendant actually received a legal sentence consisting of an indeterminate term of incarceration of 18 years to life. Accordingly, under the circumstances, the sentence imposed must be vacated, and the matter remitted to the County Court, Dutchess County,

March 15, 2011

Page 1.

PEOPLE v FIGUEROA, LUIS M., also known as
FIGUEROA, LOUIS M.

to afford the defendant the opportunity to accept the sentence that was actually imposed, or permit him to withdraw his plea of guilty (*see People v Cameron*, 83 NY2d 838, 840; *People v Selikoff*, 35 NY2d 227, 239-240, *cert denied* 419 US 1122; *People v Sosa-Rodriguez*, 63 AD3d 861, 863).

In light of our determination, we need not address the defendant's remaining contentions.

RIVERA, J.P., BALKIN, LEVENTHAL and HALL, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court