

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

D30569
C/hu

_____AD3d_____

Argued - February 22, 2011

PETER B. SKELOS, J.P.
RUTH C. BALKIN
LEONARD B. AUSTIN
SANDRA L. SGROI, JJ.

2009-11310

DECISION & ORDER

The People, etc., respondent,
v Anthony Ruggiero, appellant.

(S.C.I. No. 1388/08)

Bracken Margolin, Besunder, LLP, Islandia, N.Y. (Linda U. Margolin and William Ferris of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Grazia DiVincenzo of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Kahn, J.), rendered November 23, 2009, convicting him of attempted criminal possession of a weapon in the second degree and attempted criminal possession of a controlled substance in the fourth degree, upon his plea of guilty, and upon an order of the same court dated November 10, 2009, inter alia, denying that branch of his motion, which was, in effect, to enforce the terms of a cooperation agreement, and imposing sentence.

ORDERED that the judgment is modified, on the law, on the facts, and as a matter of discretion in the interest of justice, the defendant's sentence is vacated, that branch of his motion, which was, in effect, to enforce the terms of a cooperation agreement is granted to the extent of deeming the defendant to have fully complied with his obligations thereunder, and the matter is remitted to the County Court, Suffolk County, for resentencing in accordance herewith; as so modified, the judgment is affirmed.

The defendant pleaded guilty to the reduced charges of attempted criminal possession of a weapon in the second degree and attempted criminal possession of a controlled substance in the

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fourth degree in exchange for a negotiated sentence. That same day, the defendant agreed to cooperate with the People in exchange for the possibility of obtaining a more lenient sentence. However, after the agreement was signed, the People unilaterally and materially changed the terms of the agreement in a manner that effectively deprived the defendant of a meaningful opportunity to successfully meet the conditions of the cooperation agreement. While the defendant made significant efforts to attempt to comply with the newly imposed terms of cooperation, his efforts were ultimately unsuccessful, and the People terminated the agreement. No recommendation for a lesser sentence than that negotiated was made, and the defendant was sentenced in accordance with the negotiated sentence.

Under the particular circumstances of this case, that branch of the defendant's motion which was to enforce the terms of the cooperation agreement should have been granted to the extent of deeming the defendant to have fully complied with his obligations thereunder so as to entitle him to any benefit upon sentencing deemed appropriate by the sentencing court (*see generally Matter of Chaipis v State Li. Auth.*, 44 NY2d 57; *cf. People v Delaney*, 80 AD2d 835). Accordingly, we must vacate the sentence and remit the matter to the County Court, Suffolk County, for resentencing. At resentencing, the defendant should be granted the benefit of having fulfilled his obligations under the cooperation agreement, to such extent as the resentencing court, in its discretion, deems appropriate.

SKELOS, J.P., BALKIN, AUSTIN and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court