

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

D32253  
W/kmb

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Submitted - May 25, 2010

THOMAS A. DICKERSON, J.P.  
CHERYL E. CHAMBERS  
L. PRISCILLA HALL  
PLUMMER E. LOTT, JJ.

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2009-11789

DECISION & ORDER

The People, etc., appellant,  
v Joseph R. (Anonymous), respondent.

(Ind. No. 949/09)

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Thomas J. Spota, District Attorney, Riverhead, N.Y. (Thomas Constant of counsel),  
for appellant.

O’Sullivan & Zacchea PLLC, Kew Gardens, N.Y. (Daniel R. Demarco of counsel),  
for respondent.

Appeal by the People from a judgment of the County Court, Suffolk County (Kahn, J.), rendered November 4, 2009, convicting the defendant of use of a child in a sexual performance, upon his plea of guilty, adjudicating the defendant a youthful offender, and imposing sentence. By decision and order dated June 22, 2010, this Court reversed the judgment, vacated the youthful offender adjudication, and remitted the matter to the County Court, Suffolk County, for further proceedings (*see People v Joseph R.*, 74 AD3d 1244). On June 14, 2011, the Court of Appeals reversed the order of this Court and remitted the matter to this Court with directions to dismiss the People’s appeal on the ground that no statute authorized the appeal by the People to this Court (*see People v Joseph R.*, 17 NY3d 767). Justice Dickerson has been substituted for the late Justice Fisher. Justice Chambers has been substituted for former Justice Santucci. Justice Hall has been substituted for former Justice Howard Miller (*see* 22 NYCRR 670.1[c]).

September 13, 2011

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Now, upon the remittitur from the Court of Appeals, it is  
ORDERED that the appeal by the People is dismissed.

DICKERSON, J.P., CHAMBERS, HALL and LOTT, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court