

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

D32474
N/kmb

_____AD3d_____

Argued - September 13, 2011

MARK C. DILLON, J.P.
RANDALL T. ENG
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2010-10866

DECISION & ORDER

The People, etc., respondent,
v Patricia Bregel, appellant.

(Ind. No. 1371/09)

Mischel & Horn, P.C., New York, N.Y. (Richard E. Mischel and Lisa Marlow Wolland of counsel), for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Robert A. Schwartz and Laurie K. Gibbons of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Honorof, J.), rendered October 6, 2010, convicting her of manslaughter in the second degree, vehicular manslaughter in the second degree, and driving while intoxicated, upon her plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

“A court is under no obligation to adhere to a sentencing promise after receiving information affecting the sentence, provided the court affords the defendant the opportunity to withdraw his [or her] plea” (*People v O’Brien*, 52 AD3d 535, 536). “[I]f the court cannot or will not impose the sentence promised, the reasons should be stated on the record in order to permit appellate review and avoid arbitrariness or trifling with the legitimate expectations of defendants” (*People v Rubendall*, 4 AD3d 13, 19; see *People v Selikoff*, 35 NY2d 227, 240, cert denied 419 US 1122). Here, the court stated on the record sufficient reasons for departing from the original sentencing promise. Further, the court afforded the defendant an opportunity to withdraw her plea of guilty, which she declined. Under these circumstances, the defendant was not entitled to specific

October 4, 2011

PEOPLE v BREGEL, PATRICIA

Page 1.

performance of the original sentencing promise (*see People v Schultz*, 73 NY2d 757, 758; *People v Barahona*, 51 AD3d 682; *People v Rubendall*, 4 AD3d at 19).

Moreover, we decline the defendant's request to reduce the sentence imposed as a matter of discretion in the interest of justice (*see People v Suitte*, 90 AD2d 80).

DILLON, J.P., ENG, SGROI and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court