

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

D32704
N/prt

_____AD3d_____

Submitted - October 7, 2011

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
PLUMMER E. LOTT, JJ.

2008-01315

DECISION & ORDER

The People, etc., respondent,
v Reggie Vega, appellant.

(Ind. No. 2098/06)

Lynn W. L. Fahey, New York, N.Y. (Winston McIntosh of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano and Sharon Y. Brodt of counsel; Lorrie A. Zinno on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Gavrin, J.), rendered October 15, 2007, convicting him of attempted murder in the second degree, upon his plea of guilty, and imposing sentence.

ORDERED that the matter is remitted to the Supreme Court, Queens County, for a hearing on the defendant's motion to withdraw his plea of guilty, for which the defendant shall be appointed new counsel, and for a new determination of the motion thereafter, and the appeal is held in abeyance pending receipt of the Supreme Court's report. The Supreme Court, Queens County, shall file its report with all convenient speed.

At sentencing, the defendant, in effect, moved to withdraw his plea of guilty. The defendant's right to counsel was adversely affected when his attorney, in effect, became a witness against him and took a position adverse to him with respect to the motion at sentencing (*see People v Dixon*, 63 AD3d 957, 957; *People v Bedoya*, 53 AD3d 621, 621; *People v Armstead*, 35 AD3d 624, 626; *People v Bryant*, 22 AD3d 676, 677). The Supreme Court should have assigned a different attorney to represent the defendant before it determined the defendant's motion to withdraw his plea of guilty (*see People v Dixon*, 63 AD3d at 957; *People v Bedoya*, 53 AD3d at 621). Accordingly, we remit the matter to the Supreme Court, Queens County, for a hearing on the defendant's motion

October 25, 2011

Page 1.

PEOPLE v VEGA, REGGIE

to withdraw his plea of guilty, for which the defendant shall be appointed new counsel, and for a new determination of the motion thereafter. We hold the appeal in abeyance pending receipt of the Supreme Court's report. We express no opinion as to the merits of the defendant's motion and we decide no other issues at this time.

RIVERA, J.P., FLORIO, DICKERSON and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court