

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

D33397  
W/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - November 28, 2011

PETER B. SKELOS, J.P.  
JOHN M. LEVENTHAL  
ARIEL E. BELEN  
SHERI S. ROMAN, JJ.

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2010-07727

DECISION & ORDER

The People, etc., respondent,  
v Amos Fully, appellant.

(Ind. No. 364/09)

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Lynn W. L. Fahey, New York, N.Y., for appellant.

Daniel M. Donovan, Jr., District Attorney, Staten Island, N.Y. (Morrie I. Kleinbart and Michael Shollar of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Richmond County (Collini, J.), rendered July 1, 2010, convicting him of burglary in the first degree, upon his plea of guilty, and imposing sentence.

ORDERED that the matter is remitted to the Supreme Court, Richmond County, for a new 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, Richmond County, shall file its report with all convenient speed.

Prior to sentencing, the defendant moved to withdraw his plea of guilty. The Supreme Court assigned a new attorney to represent the defendant at a hearing on the defendant's motion, but, at the hearing, the new attorney stated on three occasions that it was his "professional" or "knowledgeable" opinion that the defendant's motion was without merit. As the People correctly concede, the defendant's right to counsel was adversely affected when his new attorney took a position adverse to the defendant's with respect to the defendant's motion (*see People v Vega*, 88 AD3d 1022; *People v Dixon*, 63 AD3d 957; *People v Bedoya*, 53 AD3d 621). Accordingly, we must

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remit the matter to the Supreme Court, Richmond County, for a new 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. 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.

SKELOS, J.P., LEVENTHAL, BELEN and ROMAN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court