

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

D34070
H/mv

_____AD3d_____

Argued - January 26, 2012

REINALDO E. RIVERA, J.P.
RANDALL T. ENG
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2010-11220

DECISION & ORDER

The People, etc., respondent,
v Jacob Milton, appellant.

(S.C.I. No. 1543/08)

Jonathan T. Latimer III, Kew Gardens, N.Y., for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Ellen C. Abbot, and Jessica L. Zellner of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Mullings, J.), rendered October 28, 2010, convicting him of grand larceny in the first degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is reversed, on the law, the plea is vacated, the superior court information is dismissed, and the matter is remitted to the Supreme Court, Queens County, for further proceedings on the felony complaint.

The defendant was charged, by felony complaint, with, inter alia, grand larceny in the first degree under Penal Law § 155.42. The felony complaint alleged that the defendant knowingly and unlawfully stole property exceeding one million dollars in value by using personal identifying information he received from four named individuals, and, inter alia, securing mortgages on two properties in the name of one of the alleged victims without that individual's knowledge or permission. The defendant waived indictment by a grand jury and pleaded guilty under a superior court information to grand larceny in the first degree and scheme to defraud in the first degree, although the plea to the scheme to defraud count was subsequently vacated at the time of sentencing. The charge in the superior court information named two financial institutions "and others" as alleged

February 21, 2012

PEOPLE v MILTON, JACOB

Page 1.

victims of the crimes. As the defendant properly contends, the judgment of conviction must be reversed, the plea vacated, and the superior court information dismissed.

The grand larceny in the first degree count in the superior court information was not an “offense for which the defendant [had been] held for action of a grand jury” (CPL 195.20), in that it was not an offense charged in the felony complaint or a lesser-included offense of an offense charged in the felony complaint (*see People v Menchetti*, 76 NY2d 473, 477; *People v Quarcini*, 4 AD3d 864, 865). The designation of the alleged victims in the superior court information differed from those named in the felony complaint (*see People v Edwards*, 39 AD3d 875, 876). Thus, the superior court information to which the defendant pleaded guilty did not “include at least one offense that was contained in the felony complaint” (*People v Zanghi*, 79 NY2d 815, 817-818), and, consequently, the superior court information was jurisdictionally defective (*id.*; *see People v Quarcini*, 4 AD3d at 865; *cf. People v Menchetti*, 76 NY2d at 475). This defect survives the defendant’s failure to raise this claim in the Supreme Court, his plea of guilty, and his waiver of the right to appeal (*see People v Zanghi*, 79 NY2d at 818; *People v Menchetti*, 76 NY2d at 475; *People v Edwards*, 39 AD3d at 876; *People v June*, 30 AD3d 1016, 1017; *People v Libby*, 246 AD2d 669, 670).

In light of our determination, we need not address the defendant’s remaining contentions.

RIVERA, J.P., ENG, HALL and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court