

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

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Submitted - May 7, 2012

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
ROBERT J. MILLER, JJ.

2011-07340

DECISION & ORDER

The People, etc., respondent,
v Robert Smith, appellant.

(Ind. No. 134/10)

Carol Kahn, New York, N.Y., for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Joan H. McCarthy of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Forman, J.), rendered August 4, 2011, convicting him of criminal possession of a controlled substance in the third degree, upon his plea of guilty, and sentencing him to a determinate term of imprisonment of two years, plus a period of two years of postrelease supervision, and a forfeiture of the United States currency and cellular telephone seized at the time of his arrest.

ORDERED that the judgment is modified, on the law, by vacating that portion of the sentence which imposed the forfeiture of the cellular telephone seized at the time of the defendant's arrest; as so modified, the judgment is affirmed.

The defendant contends that the County Court erred in failing to dismiss the indictment in the interest of justice (*see* CPL 210.40[1]; *People v Clayton*, 41 AD2d 204). However, by pleading guilty, the defendant forfeited his right to raise that issue on appeal (*see People v Travis*, 205 AD2d 648, 648; *People v Merlo*, 195 AD2d 576, 576; *People v Mitchell*, 189 AD2d 900, 900; *People v Purcell*, 161 AD2d 812, 813; *People v Macy*, 100 AD2d 557, 557).

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Under the particular circumstances of this case, we deem it appropriate to vacate that portion of the defendant's sentence which imposed the forfeiture of the cellular telephone seized at the time of his arrest.

RIVERA, J.P., DICKERSON, HALL and MILLER, JJ., concur.

ENTER:

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

Aprilanne Agostino
Clerk of the Court