

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

D36055
G/kmb

_____AD3d_____

Submitted - September 5, 2012

DANIEL D. ANGIOLILLO, J.P.
RUTH C. BALKIN
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2010-11493

DECISION & ORDER

The People, etc., respondent,
v Eddie Murdock, appellant.

(Ind. No. 2807/09)

Martin Geoffrey Goldberg, Franklin Square, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Tammy J. Smiley of counsel;
Matthew C. Frankel on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Peck, J.), rendered October 19, 2010, convicting him of attempted criminal possession of stolen property in the third degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is modified, on the law and as a matter of discretion in the interest of justice, by vacating the provision of the sentence directing the defendant to pay restitution in the sum of \$651.41; as so modified, the judgment is affirmed.

Although a court is free to reserve the right to order restitution as part of a plea bargain, the plea minutes in this case do not indicate that the plea of guilty was negotiated with terms that included restitution (*see People v Ortega*, 61 AD3d 705, 706; *People v Kegel*, 55 AD3d 625; *People v Henderson*, 44 AD3d 873, 873-874; *People v Cisco*, 208 AD2d 643; *People v Cowan*, 168 AD2d 509). Accordingly, under the circumstances of this case, where the defendant requests only that we vacate the restitution provision of his sentence, and upon the People's consent thereto, we

October 3, 2012

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modify the sentence by vacating the provision directing the defendant to pay restitution in the sum of \$651.41 so as to conform with the terms of his plea agreement.

ANGIOLILLO, J.P., BALKIN, AUSTIN and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court