

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

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**KA 04-01394**

PRESENT: SMITH, J.P., CENTRA, FAHEY, GREEN, AND PINE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

QUINN-TARIUS WHITE, DEFENDANT-APPELLANT.

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WILLIAM G. PIXLEY, ROCHESTER, FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (LESLIE E. SWIFT OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Monroe County Court (Frank P. Geraci, Jr., J.), rendered March 10, 2004. The judgment convicted defendant, upon his plea of guilty, of murder in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law, the plea is vacated and the matter is remitted to Monroe County Court for further proceedings on the indictment.

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of murder in the second degree (Penal Law § 125.25 [2] [depraved indifference murder]), defendant contends that his guilty plea was not knowingly, voluntarily and intelligently entered. "[A]lthough defendant failed to preserve that contention for our review, we conclude that his statements during the plea colloquy cast significant doubt upon his guilt with respect to [that crime], and thus this case falls within the exception to the preservation requirement" (*People v Jones*, 64 AD3d 1158, 1159, lv denied 13 NY3d 860, citing *People v Lopez*, 71 NY2d 662, 666). Defendant stated during the plea colloquy that he and a codefendant were armed, respectively, with a rifle and a shotgun, and that they searched for the victim and, upon locating him, shot him at close range. Defendant also stated that he fired at the victim. Based upon his description of the two-on-one shooting, "defendant is 'guilty of an intentional shooting or no other' " (*People v Gonzalez*, 302 AD2d 870, 871-872, *affd* 1 NY3d 464, quoting *People v Wall*, 29 NY2d 863, 864; see *People v Payne*, 3 NY3d 266, 270, *rearg denied* 3 NY3d 767). Thus, the factual allocution failed to establish that defendant acted recklessly or with depraved indifference (see *Gonzalez*, 1 NY3d at 467-468). We therefore reverse the judgment of conviction, vacate the plea and remit the

matter to County Court for further proceedings on the indictment.

Entered: February 11, 2010

Patricia L. Morgan  
Clerk of the Court