

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

1362

KA 07-01925

PRESENT: MARTOCHE, J.P., CENTRA, CARNI, LINDLEY, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

BERNARD L. SNOW, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (KIMBERLY F. DUGUAY OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (ELIZABETH CLIFFORD OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (John J. Ark, J.), rendered July 26, 2007. The judgment convicted defendant, upon his plea of guilty, of robbery in the third degree (three counts), grand larceny in the fourth degree and petit larceny (two counts).

It is hereby ORDERED that the judgment so appealed from is unanimously modified on the law by vacating the order of restitution dated October 23, 2007 and as modified the judgment is affirmed.

Memorandum: Defendant appeals from a judgment convicting him, upon his plea of guilty, of three counts of robbery in the third degree (Penal Law § 160.05), two counts of petit larceny (§ 155.25), and one count of grand larceny in the fourth degree (§ 155.30 [1]). Defendant contends that his plea was not knowing, voluntary, or intelligent because Supreme Court failed to inform him at the time of the plea proceeding that he would have to pay restitution. Defendant failed to preserve his contention for our review but, as the People correctly concede, there was no discussion of restitution on the record during the plea proceeding. The People thus contend that defendant "compellingly" argues that restitution was not part of the bargained-for sentence. We agree with the People's further contention, however, that any error in imposing restitution at the original sentencing was remedied when the court did not impose restitution at defendant's resentencing (*see People v Williams*, 14 NY3d 198, 217, *cert denied* ___ US ___ [Oct. 4, 2010]; *see also People v Minaya*, 54 NY2d 360, 363-364, *cert denied* 455 US 1024).

Although not addressed by defendant or the People, we note that the court, following the resentencing, issued an order imposing restitution. "Because there is no basis in the record for the restitution amount contained in the . . . order of restitution," we

modify the judgment by vacating that order (*see People v Nagel*, 60 AD3d 1485, *lv denied* 12 NY3d 918).

Entered: November 12, 2010

Patricia L. Morgan
Clerk of the Court