

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

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KA 14-00336

PRESENT: WHALEN, P.J., SMITH, LINDLEY, NEMOYER, AND SCUDDER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ROBERT W. HENDERSON, JR., DEFENDANT-APPELLANT.

D.J. & J.A. CIRANDO, ESQS., SYRACUSE (JOHN A. CIRANDO OF COUNSEL), FOR DEFENDANT-APPELLANT.

GREGORY S. OAKES, DISTRICT ATTORNEY, OSWEGO (AMY L. HALLENBECK OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Oswego County Court (Donald E. Todd, J.), rendered August 12, 2013. The judgment convicted defendant, upon his plea of guilty, of attempted criminal possession of a weapon in the second degree and criminal possession of a controlled substance in the fifth degree.

It is hereby ORDERED that the case is held, the decision is reserved and the matter is remitted to Oswego County Court for a reconstruction hearing.

Memorandum: On appeal from a judgment convicting him, upon his plea of guilty, of attempted criminal possession of a weapon in the second degree (Penal Law §§ 110.00, 265.03 [3]) and criminal possession of a controlled substance in the fifth degree (§ 220.06 [1]), defendant contends, inter alia, that his plea was involuntarily entered. The transcript of the plea proceeding is incomplete, however, and we are unable to determine the merits of his contentions on appeal. The plea proceeding was not transcribed by a court reporter; instead, it was digitally recorded, and numerous statements apparently made by defendant during the proceeding are designated as "inaudible" in the transcript before us. We therefore hold the case, reserve decision, and remit the matter to Oswego County Court for a reconstruction hearing with respect to the portions of the plea proceeding that were not transcribed because of the inaudibility of the digital recording (*see Matter of Naquan L.G. [Carolyn C.]*, 119 AD3d 567, 567-568).

Entered: June 17, 2016

Frances E. Cafarell
Clerk of the Court