

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

631

KA 16-00659

PRESENT: CARNI, J.P., LINDLEY, DEJOSEPH, CURRAN, AND TROUTMAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

THOMAS C. HALL, DEFENDANT-APPELLANT.

CARR SAGLIMBEN LLP, OLEAN (JAY D. CARR OF COUNSEL), FOR
DEFENDANT-APPELLANT.

LORI PETTIT RIEMAN, DISTRICT ATTORNEY, LITTLE VALLEY, FOR RESPONDENT.

Appeal from a judgment of the Cattaraugus County Court (Ronald D. Ploetz, J.), rendered February 1, 2016. The judgment convicted defendant, upon his plea of guilty, of criminal facilitation in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously modified as a matter of discretion in the interest of justice and on the law by vacating the sentence, and as modified the judgment is affirmed, and the matter is remitted to Cattaraugus County Court for resentencing.

Memorandum: On appeal from a judgment convicting him upon a plea of guilty of criminal facilitation in the second degree (Penal Law § 115.05), defendant contends that he was improperly sentenced as a second felony offender. Defendant failed to preserve that contention for our review (*see People v Smith*, 73 NY2d 961, 962-963), but we exercise our power to reach it as a matter of discretion in the interest of justice (*see CPL 470.15 [3] [c]*), and we note that the People correctly concede defendant's point. We therefore modify the judgment by vacating the sentence, and we remit the matter to County Court for resentencing. It is well settled that, "under New York's 'strict equivalency' standard for convictions rendered in other jurisdictions, a federal conviction for conspiracy to commit a drug crime may not serve as a predicate felony for sentencing purposes" (*People v Ramos*, 19 NY3d 417, 418).

Entered: April 28, 2017

Frances E. Cafarell
Clerk of the Court