

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

**446**

**KA 09-01272**

PRESENT: WHALEN, P.J., SMITH, CENTRA, TROUTMAN, AND SCUDDER, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ELVIRA M. PUSKAR, DEFENDANT-APPELLANT.

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REBECCA L. WITTMAN, UTICA, FOR DEFENDANT-APPELLANT.

SCOTT D. MCNAMARA, DISTRICT ATTORNEY, UTICA (STEVEN G. COX OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Oneida County Court (Michael L. Dwyer, J.), rendered December 8, 2008. The judgment convicted defendant, upon her plea of guilty, of criminal possession of a controlled substance in the third degree.

It is hereby ORDERED that the case is held, the decision is reserved and the matter is remitted to Oneida County Court for further proceedings in accordance with the following memorandum: Defendant appeals from a judgment convicting her, upon her plea of guilty, of criminal possession of a controlled substance in the third degree (Penal Law § 220.16 [1]). As the People correctly concede, County Court failed to advise defendant, a noncitizen, of the deportation consequences of her felony guilty plea, as required by *People v Pegue* (22 NY3d 168). We therefore hold the case, reserve decision and remit the matter to County Court to afford defendant the opportunity to move to vacate her plea based upon a showing that there is a "reasonable probability" that she would not have pleaded guilty had she known that she faced the risk of being deported as a result of the plea (*id.* at 176; see *People v Odle*, 134 AD3d 1132, 1133; *People v Medina*, 132 AD3d 1363, 1363-1364).

Entered: April 28, 2017

Frances E. Cafarell  
Clerk of the Court