

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

523

**KA 08-02092**

PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, GREEN, AND GORSKI, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, APPELLANT,

V

MEMORANDUM AND ORDER

RICHARD L. COLEMAN, DEFENDANT-RESPONDENT.

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JON E. BUDELMANN, DISTRICT ATTORNEY, AUBURN (CHRISTOPHER T. VALDINA OF COUNSEL), FOR APPELLANT.

DAVID P. ELKOVITCH, AUBURN, FOR DEFENDANT-RESPONDENT.

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Appeal from an order of the Cayuga County Court (Thomas G. Leone, J.), entered January 16, 2008. The order granted the CPL 440.10 motion of defendant and vacated the judgment convicting defendant of, inter alia, burglary in the first degree.

It is hereby ORDERED that the order so appealed from is unanimously affirmed.

Memorandum: The People appeal from an order granting defendant's CPL 440.10 motion and vacating the judgment convicting defendant upon his plea of guilty of, inter alia, burglary in the first degree (Penal Law § 140.30 [3]). We conclude that County Court properly vacated the judgment on the ground that defendant was not advised prior to entering his plea that he would be subject to a period of postrelease supervision (*see People v Catu*, 4 NY3d 242, 244-245; *People v Powless*, 46 AD3d 1350). Inasmuch as the court did not impose a period of postrelease supervision at the time of sentencing and defendant was unaware of its imposition until after his direct appeal was decided, we reject the People's contention that the motion is barred by CPL 440.10 (2) (c) (*see Powless*, 46 AD3d 1350).

Entered: April 24, 2009

Patricia L. Morgan  
Deputy Clerk of the Court