

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

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KA 10-00548

PRESENT: SCUDDER, P.J., SMITH, CARNI, GREEN, AND MARTOCHE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TONY BEASLEY, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (BARBARA J. DAVIES OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (J. MICHAEL MARION OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Michael L. D'Amico, J.), rendered March 5, 2010. The judgment convicted defendant, upon his plea of guilty, of burglary in the first degree.

It is hereby ORDERED that the judgment so appealed from is unanimously modified on the law by vacating the sentence and as modified the judgment is affirmed, and the matter is remitted to Erie County Court for resentencing in accordance with the following Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of burglary in the first degree (Penal Law § 140.30 [4]). We agree with defendant that County Court erred in failing to set forth on the record its determination denying defendant's request for youthful offender treatment (*see* CPL 720.20 [1]; *People v Lee*, 79 AD3d 1641; *cf. People v Wargula*, ___ AD3d ___ [July 1, 2011]). We therefore modify the judgment by vacating the sentence, and we remit the matter to County Court for resentencing after a determination whether defendant should be sentenced as a youthful offender (*see Lee*, 79 AD3d at 1641-1642).

Entered: July 1, 2011

Patricia L. Morgan
Clerk of the Court