

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

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**KA 10-01400**

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, SCONIERS, AND MARTOCHE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

LUIS F. CARRASQUILLO, DEFENDANT-APPELLANT.

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FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (CHRISTINE M. COOK OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (VICTORIA M. WHITE OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Onondaga County Court (Joseph E. Fahey, J.), rendered May 29, 2009. The judgment convicted defendant, upon his plea of guilty, of criminal sale of a controlled substance in the third 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 Onondaga County Court for the filing of a predicate felony statement prior to resentencing.

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of criminal sale of a controlled substance in the third degree (Penal Law § 220.39 [1]), defendant contends that his sentence as a second felony drug offender is illegal because he was never given the opportunity to challenge the prior felony conviction. Here, although defendant admitted that he had a prior felony conviction, the certificate of conviction does not reflect that defendant was sentenced as a second felony drug offender. The sentence therefore is illegal, and we modify the judgment by vacating the sentence, and we remit the matter to County Court for the filing of a predicate felony statement pursuant to CPL 400.21 prior to resentencing (*see People v Scarbrough*, 66 NY2d 673, 674, *rev'd on dissenting op of Boomer, J.* at 105 AD2d 1107; *People v Ruddy*, 51 AD3d 1134, 1135, *lv denied* 12 NY3d 787).

Entered: June 8, 2012

Frances E. Cafarell  
Clerk of the Court