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This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 209 SSM 26
The People &c.,
Respondent,
v.
Stephen Pellegrino,
Appellant.

Submitted by Joanne Legano Ross, for appellant.
Submitted by Yuval Simchi-Levi, for respondent.

MEMORANDUM:

The order of the Appellate Term should be affirmed.

A guilty plea is not invalid solely because the trial court failed to recite a defendant's constitutional rights under Boykin v Alabama (395 US 238 [1969]); see People v Conceicao, ___ NY3d ___, 2015 NY Slip Op ___ [decided herewith]). The record as

a whole, however, must affirmatively demonstrate that defendant knowingly, intelligently and voluntarily waived those rights (see People v Harris, 61 NY2d 9, 17 [1983]).

The Appellate Term correctly concluded that the record in this case affirmatively shows a knowing, intelligent and voluntary waiver. Although he was initially charged with a felony, defendant pleaded guilty to promoting prostitution in the fourth degree (Penal Law § 230.20), a class A misdemeanor, in exchange for a \$250 fine. He discussed the plea with his attorney for two days and personally confirmed that he was pleading guilty of his own free will because he was, in fact, guilty of the charge. The court ensured that defendant was aware of any potential immigration consequences and also that the conviction would add to his criminal record. We are satisfied that these facts establish a knowing, intelligent and voluntary waiver.

People v Stephen Pellegrino

SSM No. 26

LIPPMAN, Chief Judge(dissenting):

I dissent for the reasons stated in my dissenting
opinion in People v Conceicao (___ NY3d ___ [decided herewith]).

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On review of submissions pursuant to section 500.11 of the Rules,
order affirmed, in a memorandum. Judges Pigott, Abdus-Salaam,
Stein and Fahey concur. Chief Judge Lippman dissents in an
opinion in which Judge Rivera concurs.

Decided November 24, 2015