

State of New York Court of Appeals

MEMORANDUM

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

No. 80
The People &c.,
Appellant,
v.
Sharon Lashley,
Respondent.

Michael D. Tarbutton, for appellant.
Allison N. Kahl, for respondent.

MEMORANDUM:

The order of the Appellate Division should be reversed and case remitted to that Court for consideration of the facts and issues raised but not determined upon appeal to that Court.

Because defendant failed to challenge the CPL 400.21 predicate felony statement filed by the People in the court of first instance, her claim that her sentence was illegal due to the failure to include the tolling periods in that document did not present a question of law for purposes of appellate review (*People v Pellegrino*, 60 NY2d 636 [1983]). Defendant's claim was not reviewable under the narrow illegal sentence exception to the preservation requirement because it was not "readily discernible from the trial record" that the sentence the court imposed was not within the permissible range* (*People v Nieves*, 2 NY3d 310, 315-316 [2004]; *see People v Samms*, 95 NY2d 52, 56-58 [2000]).

Order reversed and case remitted to the Appellate Division, First Department, for consideration of the facts and issues raised but not determined on appeal to that Court, in a memorandum. Chief Judge DiFiore and Judges Rivera, Fahey, Garcia, Wilson, Singas and Cannataro concur.

Decided December 14, 2021

* A defendant challenging a sentence has several avenues of relief such as a direct appeal to the intermediate appellate court to raise issues of law or seek review under the court's interest of justice jurisdiction, or a motion to set aside a sentence pursuant to CPL 440.20 in the court of first instance.