

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D54940  
N/htr

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - December 12, 2017

RUTH C. BALKIN, J.P.  
JOHN M. LEVENTHAL  
SYLVIA O. HINDS-RADIX  
JOSEPH J. MALTESE, JJ.

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2014-06515

DECISION & ORDER

The People, etc., respondent,  
v Guillermo Montiel-Islas, appellant.

(S.C.I. No. 2337/13)

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Paul Skip Laisure, New York, NY (Tammy Linn of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, NY (John M. Castellano, Johnnette Traill, Merri Turk Lasky, and Timothy McGrath of counsel; Max Lubin on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Pauline Mullings, J.), rendered October 1, 2013, convicting him of aggravated driving while intoxicated, upon his plea of guilty, and imposing sentence.

ORDERED that the matter is remitted to the Supreme Court, Queens County, to afford the defendant an opportunity to move to vacate his plea in accordance herewith, and for a report thereafter on any such motion, and the appeal is held in abeyance in the interim. The Supreme Court, Queens County, shall file its report with all convenient speed.

In *People v Peque* (22 NY3d 168), the Court of Appeals held that, as part of a trial court's independent obligation to ascertain whether a defendant is pleading guilty voluntarily, the court must alert a noncitizen defendant, through a "short, straightforward statement on the record," that, if the defendant is not a United States citizen, "he or she may be deported on a guilty plea" (*id.* at 197). Here, the Supreme Court's vague reference to "immigration ramifications" was not adequate under *Peque* (*see id.* at 183).

In order to withdraw or obtain vacatur of a plea based upon a *Peque* error, "a

March 28, 2018

Page 1.

PEOPLE v MONTIEL-ISLAS, GUILLERMO

defendant must show that there is a reasonable probability that he or she would not have pleaded guilty and would have gone to trial had the trial court informed the defendant of potential deportation” (*id.* at 198; *see People v Lopez-Alvarado*, 149 AD3d 981, 981-982). That issue is not determinable on this record. Accordingly, we remit the matter to the Supreme Court, Queens County, to afford the defendant an opportunity to move to vacate his plea, and for a report by the Supreme Court thereafter. Any such motion shall be made by the defendant within 60 days after the date of this decision and order, and, upon such motion, the defendant shall have the burden of establishing that there is a “reasonable probability” that he would not have pleaded guilty had the court advised him of the possibility of deportation (*People v Peque*, 22 NY3d at 176; *see People v Lopez-Alvarado*, 149 AD3d at 981-982). In its report to this Court, the Supreme Court shall state whether the defendant moved to vacate his plea of guilty, and if so, shall include its findings as to whether the defendant has made the requisite showing to entitle him to vacatur of the plea (*see People v Peque*, 22 NY3d at 200-201; *People v Lopez-Alvarado*, 149 AD3d at 982).

BALKIN, J.P., LEVENTHAL, HINDS-RADIX and MALTESE, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court