

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

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KA 14-00190

PRESENT: WHALEN, P.J., CARNI, NEMOYER, TROUTMAN, AND SCUDDER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

EARL F. SPRAGUE, III, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (NICHOLAS P. DIFONZO OF COUNSEL), FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (WILLIAM G. ZICKL OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Genesee County Court (Robert C. Noonan, J.), rendered January 22, 2014. The judgment convicted defendant, upon a jury verdict, of sexual abuse in the first degree (28 counts).

It is hereby ORDERED that the case is held, the decision is reserved and the matter is remitted to Genesee County Court for further proceedings in accordance with the following memorandum: On appeal from a judgment convicting him of 28 counts of sexual abuse in the first degree (Penal Law § 130.65 [3]), defendant contends, inter alia, that County Court erred in failing to grant his motion for a trial order of dismissal. In accordance with *People v Concepcion* (17 NY3d 192, 197-198) and *People v LaFontaine* (92 NY2d 470, 474, rearg denied 93 NY2d 849), we do not address that contention inasmuch as " 'we cannot deem the court's failure to rule on the . . . motion as a denial thereof' " (*People v White*, 134 AD3d 1414, 1415). We therefore hold the case, reserve decision, and remit the matter to County Court for a ruling on the motion.

Entered: June 17, 2016

Frances E. Cafarell
Clerk of the Court