

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

1203

KA 16-00445

PRESENT: SMITH, J.P., CARNI, CURRAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

HARRISON LESTER, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (PIOTR BANASIAK OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (JAMES P. MAXWELL OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Onondaga County Court (Joseph E. Fahey, J.), rendered October 27, 2014. The judgment convicted defendant, upon his plea of guilty, of burglary in the first degree and burglary in the second degree.

It is hereby ORDERED that the case is held, the decision is reserved and the matter is remitted to Onondaga County Court for further proceedings in accordance with the following memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of burglary in the first degree (Penal Law § 140.30 [3]) and burglary in the second degree (§ 140.25 [2]). The conviction arises from two separate incidents that occurred seven days apart. We agree with defendant that County Court erred in failing to determine whether he should be afforded youthful offender status with respect to his conviction of burglary in the second degree (*see People v Rudolph*, 21 NY3d 497, 501 [2013]). Defendant was 18 years old at the time of the incident underlying his conviction of burglary in the second degree and thus is an eligible youth with respect to that offense (*see CPL 720.10 [1], [2]*), and the court was therefore required to make an explicit youthful offender determination on the record (*see People v Minemier*, 29 NY3d 414, 421 [2017]). Because the court failed to make such a determination, we hold the case, reserve decision, and remit the matter to County Court to make and state for the record "a determination of whether defendant is a youthful offender" (*Rudolph*, 21 NY3d at 503).

Entered: November 9, 2017

Mark W. Bennett
Clerk of the Court