

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

374

KA 18-01621

PRESENT: SMITH, J.P., PERADOTTO, CARNI, LINDLEY, AND TROUTMAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, APPELLANT,

V

MEMORANDUM AND ORDER

THOMAS A. RAFFERTY, DEFENDANT-RESPONDENT.

JAMES B. RITTS, DISTRICT ATTORNEY, CANANDAIGUA (JEFFERY R. FRIESEN OF COUNSEL), FOR APPELLANT.

THOMAS A. RAFFERTY, DEFENDANT-RESPONDENT PRO SE.

Appeal from an order of the Ontario County Court (Frederick G. Reed, A.J.), dated June 4, 2018. The order granted defendant's motion to dismiss the indictment and dismissed the indictment.

It is hereby ORDERED that the order so appealed from is unanimously affirmed.

Memorandum: The People appeal from an order granting that part of defendant's omnibus motion seeking to dismiss the indictment in the furtherance of justice pursuant to CPL 210.40 (1). We affirm.

" 'While the question of whether to dismiss an indictment in the furtherance of justice is addressed to the discretion of the trial court, this discretion is not absolute' " (*People v Coomey*, 144 AD3d 1583, 1583 [4th Dept 2016]; see *People v Hirsch*, 85 AD2d 902, 902 [4th Dept 1981]). Here, contrary to the People's contention, we conclude that there is no basis for reversal inasmuch as County Court did not abuse its discretion in dismissing the indictment charging defendant, an employee of the County of Ontario, with three counts of falsifying business records in the second degree (Penal Law § 175.05 [1]) and three counts of offering a false instrument for filing in the first degree (§ 175.35 [1]; cf. *People v Scott*, 284 AD2d 899, 900 [4th Dept 2001], lv denied 96 NY2d 924 [2001]; *People v Wright*, 278 AD2d 820, 820 [4th Dept 2000], lv denied 96 NY2d 789 [2001]; see generally *People v Stranahan*, 237 AD2d 920, 920 [4th Dept 1997], lv denied 89 NY2d 1101 [1997]). The court " 'carefully review[ed] . . . all of the criteria listed in CPL 210.40 (1) and [properly found] several of them applicable and compelling' " (*Coomey*, 144 AD3d at 1583, quoting *People v Herman L.*, 83 NY2d 958, 959 [1994]).

Entered: July 5, 2019

Mark W. Bennett
Clerk of the Court