

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

280

**KA 22-01181**

PRESENT: WHALEN, P.J., CURRAN, SMITH, NOWAK, AND DELCONTE, JJ.

---

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

OSHEA BURNS, DEFENDANT-APPELLANT.  
(APPEAL NO. 1.)

---

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (SARA A. GOLDFARB OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (ELISABETH A. DANNAN OF COUNSEL), FOR RESPONDENT.

---

Appeal from a judgment of the Onondaga County Court (Gordon J. Cuffy, A.J.), rendered June 1, 2022. The judgment convicted defendant of criminal possession of a weapon in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law, and the indictment is dismissed.

Memorandum: In appeal No. 1, defendant appeals from a judgment convicting him of criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]). In appeal No. 2, he appeals from a judgment convicting him upon his plea of guilty of criminal possession of a weapon in the second degree (*id.*). The conviction of each of those crimes stems from defendant's alleged possession of a gun outside of his home or place of business on May 14 and May 29, 2021.

With respect to appeal No. 1, as defendant contends and the People correctly concede, defendant's conviction of criminal possession of a weapon in the second degree related to the May 14 incident is illegal because defendant did not plead guilty to that count of the indictment (*see People v Allen*, 267 AD2d 982, 982 [4th Dept 1999]; *People v Irwin*, 166 AD2d 924, 924-925 [4th Dept 1990]). Indeed, the CPL defines a "conviction" as "the entry of a plea of guilty to, or a verdict of guilty upon, an accusatory instrument other than a felony complaint, or to one or more counts of such instrument" (CPL 1.20 [13]). Here, there could be no conviction because defendant did not plead guilty to any count of the indictment with respect to appeal No. 1, and that matter never proceeded to trial. Consequently, in appeal No. 1, we reverse the judgment and dismiss the indictment.

With respect to appeal No. 2, we conclude that the sentence is not unduly harsh or severe.

Entered: April 25, 2025

Ann Dillon Flynn  
Clerk of the Court