

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

201

KA 23-01285

PRESENT: LINDLEY, J.P., BANNISTER, GREENWOOD, NOWAK, AND HANNAH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CHARLES JONES, DEFENDANT-APPELLANT.

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

MICHAEL J. KEANE, DISTRICT ATTORNEY, BUFFALO (TABITHA R. SALONEN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Sheila A. DiTullio, J.), rendered June 15, 2023. The judgment convicted defendant, upon his plea of guilty, of manslaughter in the first degree (two counts).

It is hereby ORDERED that the judgment so appealed from is unanimously modified on the law by vacating the sentence and as modified the judgment is affirmed, and the matter is remitted to Erie County Court for further proceedings in accordance with the following memorandum: Defendant appeals from a judgment convicting him, upon his plea of guilty, of two counts of manslaughter in the first degree (Penal Law § 125.20 [1]). As a condition of his plea, defendant waived his right to a Penal Law § 60.12 hearing to determine his eligibility for an alternative sentence under the Domestic Violence Survivors Justice Act. Inasmuch as "section 60.12 hearings are not waivable as a condition of a plea agreement" (*People v N.H.*, – NY3d –, 2026 NY Slip Op 02437, *1 [2026]), we agree with defendant that this matter must be remitted for further proceedings, including a Penal Law § 60.12 hearing should defendant request one (*see id.* at *7). We therefore modify the judgment by vacating the sentence, and we remit the matter to County Court for further proceedings.

Defendant's remaining contentions are academic in light of our determination.

Entered: June 5, 2026

Ann Dillon Flynn
Clerk of the Court