

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

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KA 24-00662

PRESENT: WHALEN, P.J., BANNISTER, MONTOUR, NOWAK, AND HANNAH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOSE CONCEPCION, DEFENDANT-APPELLANT.

KELIANN M. ARGY, ORCHARD PARK, FOR DEFENDANT-APPELLANT.

VINCENT A. HEMMING, DISTRICT ATTORNEY, WARSAW, FOR RESPONDENT.

Appeal from a judgment of the Wyoming County Court (Melissa Lightcap Cianfrini, A.J.), rendered April 24, 2024. The judgment convicted defendant, upon his plea of guilty, of assault in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law, the plea is vacated, and the matter is remitted to Wyoming County Court for further proceedings on the indictment.

Memorandum: Defendant appeals from a judgment convicting him, upon his plea of guilty, of assault in the second degree (Penal Law § 120.05 [3]). As defendant contends and the People correctly concede, County Court misadvised defendant as to both the minimum term of incarceration and the maximum period of postrelease supervision to which he was exposed. Thus, defendant did not knowingly, voluntarily, and intelligently plead guilty (*see People v Scott*, 44 NY3d 302, 314-315 [2025]; *People v Keller*, 168 AD3d 1098, 1099-1100 [2d Dept 2019]). We therefore reverse the judgment and vacate the plea, and we remit the matter to County Court for further proceedings on the indictment.

In light of our determination, defendant's remaining contention is academic.

Entered: June 5, 2026

Ann Dillon Flynn
Clerk of the Court