

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

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KA 14-00040

PRESENT: SMITH, J.P., FAHEY, CARNI, VALENTINO, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ISAAC L. MCDONALD, DEFENDANT-APPELLANT.

ROBERT M. PUSATERI, CONFLICT DEFENDER, LOCKPORT (EDWARD P. PERLMAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. VIOLANTE, DISTRICT ATTORNEY, LOCKPORT (LAURA T. BITTNER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Niagara County Court (Sara S. Farkas, J.), rendered December 11, 2013. The judgment convicted defendant, upon his plea of guilty, of rape in the third degree, disseminating indecent materials to minors in the first degree and failure to register internet identifiers.

It is hereby ORDERED that the case is held, the decision is reserved, and the matter is remitted to Niagara County Court for further proceedings in accordance with the following Memorandum: Defendant appeals from a judgment convicting him upon his guilty plea of, inter alia, rape in the third degree (Penal Law § 130.25 [2]). We agree with defendant that County Court failed to rule on his motion to withdraw his guilty plea. Contrary to the People's contention, we cannot "deem the court's failure to rule on the . . . motion as a denial thereof" (*People v Spratley*, 96 AD3d 1420, 1421; see *People v Concepcion*, 17 NY3d 192, 197-198). We therefore hold the case, reserve decision, and remit the matter to County Court to determine defendant's motion.

Entered: February 6, 2015

Frances E. Cafarell
Clerk of the Court