

State of New York Court of Appeals

MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 85 SSM 20
The People &c.,
Respondent,
v.
Tyjhe Hargrove,
Appellant.

Submitted by Hannah Kon, for appellant.
Submitted by Jordan Cerutti, for respondent.

MEMORANDUM:

The order of the Appellate Division should be reversed and the case remitted to Supreme Court for further proceedings in accordance with this memorandum.

“[W]hen a defendant has been convicted of an armed felony . . . and the only barrier to his or her youthful offender eligibility is that conviction, the court is required to determine on the record whether the defendant is an eligible youth by considering the presence or absence of the factors set forth in CPL 720.10 (3)” (*People v Middlebrooks*, 25 NY3d 516, 527-528 [2015]; *accord People v Lofton*, 29 NY3d 1097, 1098 [2017]).¹ Here, the People concede that the sentencing court failed to make any appropriate on-the-record determination. We accept the People’s concession and, accordingly, the case should be remitted for consideration of youthful offender treatment.

On review of submissions pursuant to section 500.11 of the Rules, order reversed and case remitted to Supreme Court, Kings County, for further proceedings in accordance with the memorandum herein. Chief Judge DiFiore and Judges Rivera, Fahey, Garcia, Wilson, Singas and Cannataro concur.

Decided November 18, 2021

¹ Defendant makes no argument that he is automatically eligible for youthful offender treatment. We therefore have no occasion to consider whether defendant’s conviction of criminal possession of a weapon in the second degree was an “armed felony offense” (*see* CPL 720.10 [2] [a]).