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

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KA 09-00940

PRESENT: CENTRA, J.P., CARNI, LINDLEY, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V   MEMORANDUM AND ORDER

ANNE E. ADAMS, DEFENDANT-APPELLANT.

DAVID GERALD JAY, BUFFALO (KEVIN J. BAUER OF COUNSEL), FOR
DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (J. MICHAEL MARION OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (Michael
F. Griffith, A.J.), rendered April 23, 2009. The judgment convicted
defendant, upon her plea of guilty, of driving while intoxicated,
offering a false instrument for filing in the second degree, and
attempted tampering with physical evidence.

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 resentencing.

Memorandum: Defendant appeals from a judgment convicting her
upon her plea of guilty of driving while intoxicated (Vehicle and
Traffic Law § 1192 [3]), offering a false instrument for filing in the
second degree (Penal Law § 175.30), and attempted tampering with
physical evidence (§§ 110.00, 215.40 [1] [a]). Defendant agreed to be
charged by superior court information (SCI), and she pleaded guilty in
County Court to the crimes charged in the SCI. Subsequent to the
entry of the plea, the Erie County Court Judge assigned to the case
recused herself. Wyoming County Court Judge Griffith, who was serving
as an Acting Supreme Court Justice (ASCJ) for the Eighth Judicial
District, informed the People and defendant that he would preside over
the sentencing, which would take place in Erie County. Although the
record contains no documentation that ASCJ Griffith had been assigned
to the case, he nevertheless thereafter presided over the sentencing
in Supreme Court, Erie County. The People concede that the record
does not contain any evidence of a transfer of the case from County
Court to Supreme Court pursuant to 22 NYCRR 200.11 (d) (4). Defendant
was sentenced to, inter alia, 15 days in jail, and the court ordered
her to write letters of apology both to the police officers involved
and to the Bar Association of Erie County. A stay of execution of the
judgment was granted by a Justice of this Court.

    Contrary to defendant's contention, the Erie County Court Judge
who recused herself did not violate any provision of the law and the
decision whether to recuse herself therefore was left to her sound
discretion (*see* Judiciary Law § 14; 22 NYCRR 100.3 [E], [F]; *People v
Williams*, 57 AD3d 1440, *lv denied* 12 NY3d 789; *People v Whitfield*, 275
AD2d 1034, *lv denied* 95 NY2d 971). We agree with defendant, however,
that she was illegally sentenced in Supreme Court after her plea had
been entered in County Court. We note at the outset that her
contention that the sentence is illegal survives the waiver of her
right to appeal (*see People v Seaberg*, 74 NY2d 1, 9; *People v
Cheatham*, 266 AD2d 875, *lv denied* 94 NY2d 917, 926), and that her
contention that ASCJ Griffith presided unlawfully may be raised for
the first time on appeal and is not precluded by her guilty plea (*see
People v Rodriguez y Paz*, 58 NY2d 327, 336-337). With respect to the
merits of defendant's contention, defendant is correct that, in order
to remove a criminal action from County Court to Supreme Court, the
Uniform Rules for the New York State Trial Courts require that such
removal be authorized by the Chief Administrator and that it occur
prior to the entry of a plea or commencement of trial (*see* 22 NYCRR
200.14). Neither condition was met here, and thus ASCJ Griffith had
no authority to preside over sentencing, rendering the sentence
illegal. We therefore modify the judgment by vacating the sentence,
and we remit the matter to County Court for resentencing. In light of
our determination, we do not reach defendant's remaining contentions.

Entered: June 18, 2010   Patricia L. Morgan
                                               Clerk of the Court