

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

1237

KA 10-00056

PRESENT: CENTRA, J.P., FAHEY, LINDLEY, AND MARTOCHE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

BLAIR CHATTLEY, DEFENDANT-APPELLANT.

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THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (KAREN RUSSO-MCLAUGHLIN OF COUNSEL), FOR DEFENDANT-APPELLANT.

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

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Appeal from a judgment of the Supreme Court, Erie County (Christopher J. Burns, J.), rendered August 27, 2009. The judgment convicted defendant, upon his plea of guilty, of criminal possession of stolen property in the fourth degree and reckless endangerment in the first degree.

It is hereby ORDERED that the case is held, the decision is reserved and the matter is remitted to Supreme Court, Erie County, for further proceedings.

Memorandum: On appeal from a judgment convicting him, upon his plea of guilty, of criminal possession of stolen property in the fourth degree (Penal Law § 165.45 [5]) and reckless endangerment in the first degree (§ 120.25), defendant contends that Supreme Court erred in failing to grant his pro se motion to withdraw his plea. There is no indication in the record, however, that the court ruled on the motion; i.e., the court neither granted nor denied it on the record before us. The Court of Appeals "has construed CPL 470.15 (1) as a legislative restriction on the Appellate Division's power to review issues either decided in an appellant's favor, or not ruled upon, by the trial court" (*People v LaFontaine*, 92 NY2d 470, 474, rearg denied 93 NY2d 849 [emphasis added]; see *People v Concepcion*, 17 NY3d 192, 197-198), and thus the court's failure to rule on the motion cannot be deemed a denial thereof. We therefore hold the case, reserve decision and remit the matter to Supreme Court for a ruling on defendant's pro se motion.

Entered: November 18, 2011

Patricia L. Morgan  
Clerk of the Court