

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

No. 119 SSM 61
The People &c.,
Appellant,
v.
Barak Cornell,
Respondent.

Submitted by Lynn S. Schaffer, for appellant.
Submitted by Timothy P. Murphy, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed.

A trial court has the constitutional duty to advise a defendant of the direct consequences of a guilty plea, including any period of postrelease supervision (PRS) that will be imposed as part of the sentence (see People v Catu, 4 NY3d 242, 244-245 [2005] [citation omitted]). "Although the court is not required

to engage in any particular litany when allocuting the defendant, 'due process requires that the record must be clear that the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant'" (id. at 245, quoting People v Ford, 86 NY2d 397, 403 [citations and internal quotation marks omitted]). "[T]he failure of a court to advise of postrelease supervision requires reversal of the conviction" (id. at 245). Further, "where a trial judge does not fulfill the obligation to advise a defendant of postrelease supervision during the plea allocution, the defendant may challenge the plea as not knowing, voluntary and intelligent on direct appeal, notwithstanding the absence of a postallocation motion" (People v Louree, 8 NY3d 541, 545-546 [2007]).

Here, the record does not make clear, as required by Catu, that at the time defendant took his plea, he was aware that the terms of the court's promised sentence included a period of PRS. Accordingly, the Appellate Division correctly determined that defendant's conviction must be reversed and that his guilty plea be vacated even in the absence of a postallocation motion.

* * * * *

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided March 24, 2011