

22 Misc.3d 140(A)

Unreported Disposition

(The decision of the Court is referenced in a table in the New York Supplement.)

Supreme Court, Appellate Term, New York,
9th and 10th Judicial Districts.

The PEOPLE of the State of New York,
Respondent,

v.

Julian Jose ROBLES, Appellant.

No. 2008–2 N CR.

March 9, 2009.

Present: TANENBAUM, J.P., MOLIA and LaCAVA, JJ.

Opinion

*1 Appeal from a judgment of the City Court of Glen Cove, Nassau County (Richard J. McCord, J.), rendered November 27, 2007. The judgment convicted defendant, upon his plea of guilty, of violating Municipal Code of the City of Glen Cove § 68–11(C);

§ 111–9(A)(1) (two charges); § 132–7(A); § 132–7(B); § 168–11(A); § 168–25(A); § 168–28(A) and § 212–12(A).

Judgment of conviction reversed, on the law, plea of guilty vacated, and matter remitted to the City Court of Glen Cove for further proceedings.

Defendant was convicted of a variety of building- and fire-related provisions of the Municipal Code of the City of Glen Cove. He challenges the adequacy of his plea allocation. We agree with defendant that his allocation, as set forth on the record, was fatally deficient, as he was never informed of the rights that he was waiving by pleading guilty, he never indicated that he was waiving them, and, indeed, he was never asked whether he agreed to plead guilty (see *Boykin v. Alabama*, 395 U.S. 238 [1969]; *People v. Hill*, 9 NY3d 189 [2007]; *People v. Harris*, 61 N.Y.2d 9 [1983]; *Hanson v. Phillips*, 442 F3d 789 [2d Cir2006]; cf. *People v. Luster*, 45 AD3d 866 [2007]). A court accepting a guilty plea must create a record affirmatively demonstrating that the defendant is aware of the rights he is waiving, and that his plea is knowing and voluntary (see *Boykin v. Alabama*, 395 U.S. 238 [1969], *supra*; *Hanson v. Phillips*, 442 F3d 789 [2006], *supra*). The City Court completely failed to create such a record. Under the particular circumstances

of this case, we find that this issue did not have to be raised in the City Court in order to present a question of law for this court (see generally *People v. Louree*, 8 NY3d 541, 546 [2007]). In the alternative, we reach the issue as a matter of discretion, in the interest of justice, in view of the glaring deficiency of the plea allocation (see generally *People v. Pearson*, 55 AD3d 314 [2008]). Accordingly, the judgment of conviction is reversed and the plea vacated (see generally *People v. Hill*, 9 NY3d at 191), and the case is remitted to the City Court for further proceedings.

Defendant also argues, in effect, that the New York State Uniform Fire Prevention and Building Code completely preempts the Municipal Code of the City of Glen Cove in the field of regulation related to fire prevention and building. Even if we assume that this claim is jurisdictional in nature, and is thus now properly before us despite the fact that defendant failed to raise it in the City Court, and despite the fact that he pleaded guilty, we reject it on the merits. We do not find in the Uniform Fire Prevention and Building Code Act an express statement of preemption by the Legislature (compare *Executive Law § 383*[1], with *General Business Law § 396–i*[6]). Furthermore, although the State has clearly expressed an interest in statewide uniformity (see *Executive Law § 371*[2][b], [c]), we do not find an implied statement of preemption. Rather, the Uniform Fire Prevention and Building Code Act permits localities to fill in the interstices of the State code with rules of their own. *Executive Law § 379*(3) provides, in relevant part:

*2 “Nothing in this article shall be construed to prohibit any municipality from adopting or enacting any building regulations relating to any matter as to which the uniform fire prevention and building code does not provide ...”

(see generally *P.O.K. RSA v. Village of New Paltz*, 157 A.D.2d 15 [3d Dept 1990], *appeal dismissed* 76 N.Y.2d 886 [1990]). To the extent that defendant may wish to challenge, on preemption grounds, particular provisions of the Municipal Code of the City of Glen Cove, as we are remitting the case to the City Court for further proceedings, that court should be permitted to pass upon these claims in the first instance, upon development by the parties of an adequate record.

People v. Robles, 22 Misc.3d 140(A) (2009)

881 N.Y.S.2d 366, 2009 N.Y. Slip Op. 50396(U)

TANENBAUM, J.P., MOLIA and LaCAVA, JJ., concur.

22 Misc.3d 140(A), 881 N.Y.S.2d 366 (Table), 2009 WL 596558, 2009 N.Y. Slip Op. 50396(U)

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