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People v. Kyle Freda, xxxxxx

County Court, Sullivan County

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Cite as: People v. Kyle Freda, xxxxxx, NYLJ 1202623771751, at *1 (Co., SUL, Decided October 11, 2013)

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Judge Frank J. LaBuda

Decided: October 11, 2013

ATTORNEYS

Attorney for the People by: Bonnie M. Mitzner, ADA, of counsel, Hon. James R. Farrell, Sullivan County District Attorney, Monticello, NY.

Attorney for Defendant: Richard M. Langone, Esq., Langone & Associates, PLLC, Garden City, NY.

DECISION and ORDER

*1

This matter comes before the Court on Defendant's motion to vacate the July 31, 2012, sentence of this Court. The People do not oppose the motion and in fact agree that in light of the Court of Appeals holding in *People v. Rudolph*, 201 WL3213329 [Court of Appeals June 27, 2013],¹ it is necessary that the sentence is vacated and that the Court consider Youthful Offender (YO) status prior to imposing sentencing. The ruling came down after this Court imposed sentencing on Defendant, but was applicable to all cases pending on appeal as of June 27, 2013, which included Defendant's case.

Based on a review of the record, the Court did not consider YO status prior to sentencing because it had been agreed that Defendant would not received YO status. Because Defendant's case was pending appeal as of June 27, 2013, the

sentence must be vacated and the matter placed on the calendar for resentencing, at which time, the Court will consider YO status and hear oral argument from counsel.

*2

Based on the foregoing, it is

ORDERED that Defendant's motion is granted and the sentence imposed on Defendant, dated July 31, 2012, is hereby vacated; and it is further

ORDERED that This matter shall be placed on the Court's calendar for November 1, 2013, at 9:30 am, at which time the Court will consider youthful offender status and hear oral argument prior to sentencing.

This shall constitute the Decision and Order of this Court.

Dated: October 11, 2013

Monticello, New York

1. The Court of Appeals held that a sentencing court has a non-delegable obligation to consider the appropriateness of youthful offender adjudication, which cannot be waived, even if the plea agreement includes such a waiver.

