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Judge Takes Post-'Rudolph' Looks at Offender's YO Status

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A young, first-time offender and honors graduate whose drug abuse culminated in a burglary conviction and 5½-year prison sentence has won a shot at youthful offender treatment, thanks to a recent Court of Appeals ruling and an attorney who brought the case to the attention of a judge.

If Kyle Freda, who gave up his right to youthful offender (YO) consideration, persuades Sullivan County Judge Frank LaBuda ([See Profile](#)) to grant him YO status, the record of conviction will be sealed, the civil disabilities that commonly accompany a criminal conviction will be eliminated and the defendant could have a chance to go free immediately. The maximum sentence for a YO adjudication is four years, but youthful offenders are not subject to a mandatory minimum.

Freda was 18 years old in 2012 when he was charged with six counts in a 19-count indictment and pleaded guilty to two crimes, second-degree burglary as a violent felony and third-degree arson.

Since Freda was under the age of 19 and had no prior convictions or youthful offender adjudications, he was eligible for YO consideration. He knowingly surrendered that right as part of the plea bargain, but the Court of Appeals' decision in [People v. Rudolph](#), 2013 NY Slip Op 04840, was a game changer.

In *Rudolph*, the court overturned its own 36-year-old precedent (see [People v. McGowen](#), 42 NY2d 905 1977), and said a sentencing judge must affirmatively determine if YO treatment is suitable in a given case whether the defendant requested it or not, and further stated over the dissent of two judges that a young offender cannot waive that youthful offender consideration as part of a negotiated plea ([NYLJ, June 28](#)).

At Freda's sentencing, LaBuda commented that the term was "pretty heavy" and described Freda as a "fine young hard working gentleman" who had already made considerable progress toward turning his life around. A pre-sentence report noted that Freda had graduated from high school with honors, has good work skills and is likely to "emerge from prison as a law abiding member of the community." The report, however, said Freda had "knowingly joined the culture involved in drug abuse which led him to a three month period of violent illegal activity."

LaBuda invited Freda to withdraw his guilty plea, and suggested that YO status would be considered if he did so. But Freda declined the invitation and was sentenced as promised to the 5½-year term in July 2012.

In April 2013, when *Rudolph* was pending before the Court of Appeals, Freda's mother, Donna, asked attorney Richard Langone of Langone & Associates in Garden City to look into whether her son should have been afforded YO consideration and whether that issue survived the appeal waiver.

Langone, who had not represented Freda at trial, agreed to investigate and asked the Third Department for permission to file a late notice of appeal.

Freda's trial counsel, Jeffrey Clemente of Narrowsburg, had not filed a notice of appeal because of the waiver, according to court papers.

The Third Department granted Langone's request and the case went back to LaBuda, who in [a decision on Oct. 11](#), vacated the sentence under *Rudolph* and scheduled a YO hearing for Nov. 1.

Langone noted that while the Court of Appeals made clear that *Rudolph* was not retroactively applicable, it also said the ruling does apply to all cases still pending direct appeal as of June 27. He said that prior to *Rudolph*, no-YO plea offers were common practice in upstate counties.

"*Rudolph* should be in the mind of every criminal law practitioner who has represented an eligible youth within the past year who was not considered for YO treatment at the time of sentencing," Langone said.

Assistant District Attorney Bonnie Mitzner represents the prosecution. There was no immediate reaction from the district attorney's office.

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