

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

People v. London

2021 N.Y. Slip Op. 04283 (App. Div. 2021) · No. Appeal No. 14179; Case No. 2017-2956 · Decided July 8, 2021

SUMMARY

The New York Supreme Court, Appellate Division, First Department modified the judgment to vacate Trevell London's adjudication as a second violent felony offender and remanded for resentencing. The court held that the defendant's Colorado burglary conviction could not serve as the predicate for that adjudication, while permitting the People to allege a different qualifying prior felony conviction on remand.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; Webber, J.; Singh, J.; Kennedy, J.
JURISDICTION	New York
DECIDED	July 8, 2021
DOCKET	Appeal No. 14179; Case No. 2017-2956
DISPOSITION	remanded
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Supreme Court, New York County, convicting him upon his guilty plea of two counts of assault in the second degree and sentencing him as a second violent felony offender.
STANDARD OF REVIEW	Review of the legality of the predicate-felony adjudication and sentence; the court modified the judgment on the law.
PRECEDENTIAL VALUE	Published appellate opinion
PARTIES	Trevell London v. The People of the State of New York

TOPICS

- sentencing
- criminal procedure
- appellate procedure

PRACTICE AREAS

Criminal procedure

Sentencing

QUESTIONS PRESENTED

1. Whether the defendant's 2009 Colorado burglary conviction could support his adjudication as a second violent felony offender.
2. Whether the judgment should be modified and the matter remanded for resentencing after vacatur of that adjudication.

HOLDINGS

1. The 2009 Colorado burglary conviction could not serve as the basis for adjudicating London a second violent felony offender.
2. The second violent felony offender adjudication must be vacated and the case remanded for resentencing; on remand, the People may allege a different prior felony conviction if one exists.

KEY QUOTATIONS

“The People concede that defendant's Colorado burglary conviction could not serve as the basis for adjudicating defendant a second violent felony offender.”

“Accordingly, we remand for resentencing.”

FACTUAL BACKGROUND

London pleaded guilty to two counts of assault in the second degree. He was sentenced as a second violent felony offender based on a 2009 Colorado burglary conviction. The People conceded on appeal that the Colorado conviction could not serve as the predicate for that adjudication.

PROCEDURAL HISTORY

The Supreme Court, New York County, rendered judgment on February 23, 2017. On appeal, the Appellate Division modified the judgment by vacating the second violent felony offender adjudication and remanding for resentencing, while affirming otherwise.

DISPOSITION

remanded

REMAND INSTRUCTIONS

Vacate the second violent felony offender adjudication and resentence defendant. On remand, the People may allege a different prior felony conviction, if one exists, as the basis for a predicate-felony adjudication.

OPINION

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PER CURIAM.

People v London (2021 NY Slip Op 04283) People v London 2021 NY Slip Op 04283 Decided on July 08, 2021 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: July 08, 2021 Before: Manzanet-Daniels, J.P., Webber, Singh, Kennedy, JJ. Ind No. 3984/15 Appeal No. 14179 Case No. 2017-2956 [*1]The People of the State of New York, Respondent, vTrevell London, Defendant-Appellant. Janet E. Sabel, The Legal Aid Society, New York (Simon Greenberg of counsel), for appellant. Cyrus R. Vance, Jr., District Attorney, New York (Michael D. Tarbutton of counsel), for respondent. Judgment, Supreme Court, New York County (Melissa C. Jackson, J.), rendered February 23, 2017, convicting defendant, upon his plea of guilty, of two counts of assault in the second degree, and sentencing him, as a second violent felony offender, to concurrent terms of five years, unanimously modified, on the law, to the extent of vacating the second violent felony offender adjudication and remanding for resentencing in accordance with this decision, and otherwise affirmed. The People concede that defendant's Colorado burglary conviction could not serve as the basis for adjudicating defendant a second violent felony offender. Accordingly, we remand for resentencing. On remand, the People may allege a different prior felony conviction, if there is one, as the basis for a predicate felony adjudication. However, their suggestion that submission of additional documents might still result in the 2009 Colorado burglary conviction qualifying as a predicate felony is unavailing.THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: July 8, 2021