

**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.

OPINION

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

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