

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT**

People v. Concepcion

2026 NY Slip Op 03581 · No. 388 KA 24-00662 · Decided June 5, 2026

SUMMARY

The New York Appellate Division, Fourth Department, reversed a judgment convicting Jose Concepcion of assault in the second degree upon his guilty plea. The court held that the plea was not knowing, voluntary, and intelligent because the trial court misadvised him regarding the minimum term of incarceration and maximum period of postrelease supervision, and it vacated the plea and remitted the matter for further proceedings.

OPINION

PER CURIAM.

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This decision is uncorrected and subject to revision before publication in the Official Reports. THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, v JOSE CONCEPCION, DEFENDANT-APPELLANT. Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department Decided on June 5, 2026 388 KA 24-00662 Present: Whalen, P.J., Bannister, Montour, Nowak, And Hannah, JJ. KELIANN M. ARGY, ORCHARD PARK, FOR DEFENDANT-APPELLANT.

VINCENT A. HEMMING, DISTRICT ATTORNEY, WARSAW, FOR RESPONDENT. Appeal from a judgment of the Wyoming County Court (Melissa Lightcap Cianfrini, A.J.), rendered April 24, 2024. The judgment convicted defendant, upon his plea of guilty, of assault in the second degree. [*1] It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law, the plea is vacated, and the matter is remitted to Wyoming County Court for further proceedings on the indictment.

Memorandum: Defendant appeals from a judgment convicting him, upon his plea of guilty, of assault in the second degree (Penal Law § 120.05 [3]). As defendant contends and the People

correctly concede, County Court misadvised defendant as to both the minimum term of incarceration and the maximum period of postrelease supervision to which he was exposed.

Thus, defendant did not knowingly, voluntarily, and intelligently plead guilty (see *People v Scott*, 44 NY3d 302, 314-315 [2025]; *People v Keller*, 168 AD3d 1098, 1099-1100 [2d Dept 2019]). We therefore reverse the judgment and vacate the plea, and we remit the matter to County Court for further proceedings on the indictment.

In light of our determination, defendant's remaining contention is academic. Entered: June 5, 2026
Ann Dillon Flynn Clerk of the Court
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