

At a term of the County Court held in and for the County of Genesee at the Court-house in Batavia, New York, on the 17<sup>th</sup> day of October 2024.

PRESENT: **HONORABLE DONALD O'GEEN**  
**County Court Judge**

STATE OF NEW YORK  
COUNTY COURT: COUNTY OF GENESEE

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**THE PEOPLE OF THE STATE OF NEW YORK**

v.

**DECISION AND ORDER**

Index No. SMZ-70083-24/001

Pavilion Town Court No. 23080081

*Defendant-Appellant.*

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By Notice of Appeal dated February 16, 2024, the defendant-appellant appeals from his conviction by guilty plea of Vehicle and Traffic Law §1110(a) (Disobedience of a Traffic-Control Device) on January 30, 2024, in the Pavilion Town Court. For the conviction, the court imposed a fine upon the defendant by order issued on or about February 5, 2024, and the defendant received two “points” against his license. The defendant appeals from the conviction and the order imposing sentence.

**NOW**, the appeal having been submitted for adjudication, the following decision is rendered upon the following papers: the Notice of Appeal; the Affidavit of Errors of Benjamin Goldman, Esq., attorney for the defendant-appellant, dated February 16, 2024; the Appeal Brief of the defendant-appellant dated June 28, 2024, submitted by Codruta Antonovici, Esq., attorney for the defendant-appellant; and the July 25, 2024, email communication of Assistant District Attorney William G. Zickl submitted in lieu of a responding brief for the People in which Mr. Zickl stated that he is “willing to stipulate the defendant be allowed to withdraw his plea and be scheduled for a pre-trial conference with the local court.”

The defendant-appellant received a speeding ticket (Vehicle and Traffic Law §1180-D) for allegedly driving 53 miles per hour in a zone restricted to 35 miles per hour in the Town of Pavilion on August 18, 2023. The defendant-appellant initially rejected a plea offer extended by the People on September 27, 2023, to resolve the case with a guilty plea to the reduced charge of a violation of Vehicle and Traffic Law §1110(a). The affidavit of errors notes that “[a] suspension was ordered by the court on January 19, 2024, for ‘failed to answer summons’.” The statement of facts contained in the defendant-appellant’s brief states that “[o]n January 19, 2024, Appellant received notice from the Department of

Motor Vehicles that his license would be suspended for failure to answer the above summons.” On January 30, 2024, according to the affidavit of errors, “Defendant, by counsel asked for the pending suspension to be lifted [ . ] as it did not appear to have merit.” The statement of facts in the brief states that “[o]n January 30, 2024, Appellant’s counsel wrote to the Pavilion Town Court, attaching a copy of the not guilty plea and fax confirmation receipt of it.” On January 31, 2024, again according to the affidavit of errors, the court informed defendant-appellant’s counsel, “via email, that to lift the pending suspension the client had to accept the People’s plea.” The statement of facts in the brief describes events slightly differently: “On January 31, 2024, Pavilion Town Court wrote that a signed plea was never received by the court. Furthermore, if Appellant wished to avoid suspension, he had to send in a signed plea as soon as possible.” As stated in the affidavit of errors, “[i]n response the defendant, by counsel, accepted the Plea in order to avoid the pending suspension for February 23, 2024.” In the statement of facts, counsel for the defendant-appellant writes: “Faced with this circumstance, Appellant pleaded guilty to the §1110(a) offer.”

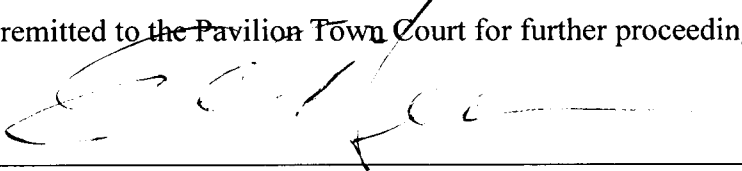
Counsel for the defendant-appellant contends that the guilty plea should be vacated because it was the product of coercion. As put in the affidavit of errors, the court “forc[ed] Defendant to plead guilty to the prosecutor’s plea offer under the threat of suspension.” In addition, counsel for defendant-appellant argues that the court committed reversible error by failing to schedule a pre-trial appearance pursuant to Vehicle and Traffic Law §1806 after the defendant-appellant sent in to the court by mail a plea of not-guilty.

As noted, Mr. Zickl for the People has stated: “I am willing to stipulate the defendant be allowed to withdraw his plea and be scheduled for a pre-trial conference with the local court.” The Court takes Mr. Zickl’s statement, along with his decision not to submit a responding brief, to mean that the People concede that the points raised in the defendant-appellant’s brief have merit. Accordingly, the Court will reverse the conviction, vacate the guilty plea and remit the matter to the Pavilion Town Court for further proceedings upon the August 18, 2023, Speeding Ticket.

**NOW, THEREFORE**, it is hereby

**ORDERED** that the judgement of conviction is reversed on the law, the guilty plea and the sentence are vacated, and the matter is remitted to the Pavilion Town Court for further proceedings.

Dated: October 17, 2024

  
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**DONALD O'GEEN**  
**County Court Judge**