

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Kapnick, J.P., Gesmer, González, Kennedy, Shulman, JJ.

15175

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

Ind. No. 747/15
Case No. 2018-5425

-against-

SAMUEL COSME,
Defendant-Appellant.

Jenay Nurse Guilford, Center for Appellate Litigation, New York (Bryan S. Furst of counsel), for appellant.

Judgment, Supreme Court, Bronx County (Steven L. Barrett, J.), rendered March 24, 2017, convicting defendant, upon his plea of guilty, of reckless endangerment in the first degree, and sentencing him to a term of five years' probation, unanimously reversed, as a matter of discretion in the interest of justice, the plea vacated, and the indictment dismissed.

As the People concede, the circumstances of this unique case warrant vacating the plea and dismissing the indictment. The plea allocution did not address whether defendant was making an informed decision to waive a potentially viable insanity defense (*see People v Mox*, 20 NY3d 936, 939 [2012]), and the record as a whole casts significant doubt on defendant's mental competence and ability to understand the proceedings or the terms of his plea (*see People v Armlin*, 37 NY2d 167, 171 [1975]).

Under these circumstances, the appropriate remedy is dismissal rather than a remand for further proceedings. Among other things, this 68-year-old, severely

mentally ill defendant lives in a secured unit of an assisted living facility under a civil guardianship order.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: October 12, 2023

A handwritten signature in black ink, appearing to read "Susanna Molina Rojas". The signature is fluid and cursive, with the first name "Susanna" being the most prominent.

Susanna Molina Rojas
Clerk of the Court