

STATE OF NEW YORK  
COUNTY COURT COUNTY OF RENSSELAER

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THE PEOPLE OF THE STATE OF NEW YORK,

Appellant,

-against-

STEVEN W. MILLS,

Defendant/Respondent.

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**DECISION AND ORDER**

(Local Court Appeal)

Index No.: \_\_\_\_\_  
Pittstown Town Court: 21060015

APPEARANCES:

HON. MARY PAT DONNELLY  
RENSSELAER COUNTY DISTRICT ATTORNEY  
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Rensselaer County Courthouse  
80 Second Street  
Troy, New York 12180

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SOBER, J.:

The People appeal from an order of the Pittstown Town Court, County of Rensselaer (Marbot, J.) on July 21, 2021 which granted an oral application of Defendant/Respondent (hereinafter also referred to as "Defendant") to dismiss the felony complaint of Driving While Intoxicated in violation of VTL §§1192(2) and 1193(1)(c)(i)(A) and a judgment of conviction and sentence for Driving While Intoxicated, an unclassified misdemeanor, in violation of VTL §1192(3). The People's "Appellant's Appendix" and "Appellant's Brief" dated December 13, 2021 were filed with the Rensselaer Supreme and County Court Clerk's Office on the same day. Thereafter, Defendant filed "Defendant's Affirmation in Opposition to the People's Appeal Pursuant to CPL §450.20(1) and Motion to Dismiss Appeal Pursuant to CPL §470.60(1)" on January 24, 2022 to which the People filed an "Affirmation in Opposition to Motion to Dismiss Appeal and in Further Support of the People's Appeal" on February 7, 2022.

A review of the record reveals that on June 12, 2021, Defendant was arrested following an automobile accident involving a passenger vehicle and an ATV operated by Defendant in which his passenger sustained injuries. Defendant was charged, in a felony complaint, with Driving While Intoxicated (hereinafter also referred to as "DWI"), and by simplified information with a misdemeanor DWI as well as 14 other traffic infractions, and issued an appearance ticket.

On July 14, 2021, Defendant appeared in Pittstown Town Court for arraignment, at which time, Judge MacNaughton recused himself, and the matter was adjourned to July 21, 2021. Prior to the next appearance, Defendant's counsel communicated with the People that the felony DWI was legally insufficient based on Defendant's prior criminal history and lack of a prior misdemeanor DWI conviction.<sup>1</sup> The People conceded as much and advised that they were considering a reduction of the felony charge, but planned to file a CPL §170.20 motion at a future appearance.

On July 21, 2021, Defendant appeared in Pittstown Town Court before Judge Marbot, at which time, Defendant's attorney made an oral application seeking a dismissal of the felony DWI complaint. The Court agreed to dismiss the felony complaint, and thereupon, Defendant pled guilty to the remaining 15 charges. With respect to the misdemeanor DWI, the Court imposed a \$500 fine and \$400 surcharge as well as a series of fines, surcharges, and conditional discharges on the remaining 14 traffic infractions.

The People now appeal contending the following: (1) the lower court improperly dismissed the felony complaint charging Defendant with DWI; (2) the lower court prematurely permitted Defendant to plead guilty to the misdemeanor DWI at arraignment, without any input from the People; and (3) the lower court imposed an illegal sentence by assessing only a mandatory fine and surcharge upon Defendant's conviction for the misdemeanor DWI.

Defendant moves to dismiss the appeal pursuant to CPL §470.60(1) alleging that the People are seeking relief pursuant to CPL §450.20(1) which Defendant alleges is inapplicable to the instant matter. The People concede that the appeal was filed under CPL §450.20; however, the People submit that the appeal was not limited in scope to subsection (1), but to any of the applicable 11 subsections of CPL §450.20. Upon review, however, the Court is constrained, as set forth in more detail below, to find any subsection that is applicable to the People's basis for appeal other than CPL §450.20(4) which allows for the People to appeal a lower court's sentence.<sup>2</sup> Accordingly, the Court finds as follows:

#### THE LOWER COURT'S DISMISSAL OF THE FELONY COMPLAINT

The People contend that the lower court improperly entertained and granted Defendant's oral

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<sup>1</sup>Defendant was previously convicted of Driving While Ability Impaired, a violation.

<sup>2</sup>In this case, the People have appealed, in part, the misdemeanor DWI sentence imposed by the lower court.

application to dismiss the felony complaint. Specifically, the People argue that the Court had no authority to do so under CPL §180.10(6), the statute cited by Defendant at the time of the application. Instead, the People cite CPL §180.85 as the applicable statutory authority to terminate prosecution, but submit that the lower's court dismissal of the felony complaint was still improper even under this statute.

Preliminarily, the Court finds that the People have no right to appeal the lower court's dismissal of the accusatory instrument that was insufficient on its face, and this Court has no jurisdiction to entertain the People's appeal pursuant to CPL §450.20 (*See, People v. Hernandez*, 98 N.Y.2d 8 [2002]; *see also Fitzpatrick v. Rosenthal*, 29 A.D.3d 24 [4<sup>th</sup> Dept., 2006]). Accordingly, Defendant's motion to dismiss the People's appeal of the lower court's dismissal of the felony complaint is granted.

Had the Court reached the merits of the People's contentions, which it does not, it would still have denied the motion. The People's reliance upon CPL §180.85 and the termination of prosecution is entirely misplaced. The criminal action was not terminated by the lower court in this matter; only the felony complaint was dismissed as legally insufficient. Moreover, while not specifically cited by Defendant at the time of arraignment or by the local court judge, CPL §140.45 requires a local court to dismiss an accusatory instrument, filed pursuant to a warrantless arrest, that is facially insufficient "and if the court is satisfied that on the basis of the available facts or evidence it would be impossible to draw and file an accusatory instrument which is sufficient on its face."

Here, *it is undisputed by the People* that the felony complaint was insufficient on its face as Defendant did not have a prior misdemeanor DWI conviction that would warrant a felony DWI charge, and therefore, no accusatory instrument could be filed that would support that charge. For the People to argue that the lower court did not have the statutory authority to dismiss a felony complaint, which the People concede is legally insufficient, is simply incomprehensible. Further, Defendant is under no obligation to convey the People's intention to file a CPL §170.20 motion. For whatever unknown reason, the People failed to file a CPL §170.20 motion.<sup>3</sup> Nor did the People put the Court on notice of any alleged serious physical injury pursuant to CPL §170.10(8). As such, this Court fails to find any impropriety in the lower court's dismissal of the felony complaint.

#### THE LOWER COURT'S ACCEPTANCE OF DEFENDANT'S GUILTY PLEA

The People next contend that the lower court improperly accepted Defendant's guilty plea to the remaining charges. Specifically, the People argue that CPL §170.10(8) prohibits a local court from accepting a guilty plea at or within 30 days of arraignment on a traffic infraction, violation or

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There is nothing in the record to establish that the People were prepared to file a CPL §170.20 motion at the time of Defendant's initially scheduled arraignment on July 14, 2021 (approximately one month after Defendant's arrest), and there is no reason given for the People's failure to file a CPL §170.20 motion prior to the adjourned date of July 21, 2021.

misdemeanor arising out of an accident resulting in serious physical injury.

The People at no time prior to the guilty plea or within 30 days of arraignment put the Court on notice pursuant to CPL §170.10(8) of the serious physical injury allegations sustained by the passenger. Furthermore, there are NO notations on the simplified traffic information of serious physical injury or "SPI" as required by VTL §1192(12) which, in turn, would give rise to the requirements of CPL §170.10(8). The People's failure to invoke CPL §170.10(8) within 30 days of arraignment is fatal and cannot be revived.

Accordingly, Defendant's motion to dismiss the People's appeal of the lower court's acceptance of Defendant's guilty plea for lack of jurisdiction is granted.

#### THE LOWER COURT'S IMPOSITION OF A SENTENCE

Finally, the People argue that the lower court failed to address certain components of a misdemeanor DWI sentence after accepting Defendant's guilty plea. Defendant concedes that the lower court did not revoke Defendant's license or mandate an ignition interlock device on any vehicle owned or operated by Defendant as required (*See, VTL §§1193[2][b][2], [1-a][c][i]*). Accordingly, the sentence imposed on July 21, 2021 shall be vacated and the matter remitted to Pittstown Town Court.

For the reasons set forth herein, the Order of the Pittstown Town Court, County of Rensselaer on July 21, 2021 (Marbot, J.) dismissing the felony complaint and the lower court's acceptance of Defendant's guilty plea is affirmed. The sentence imposed by the Pittstown Town Court, County of Rensselaer on July 21, 2021 for misdemeanor DWI shall be vacated, and the matter remitted to Pittstown Town Court for re-sentencing.

This shall constitute the Decision and Order of the Court.

DATED:        March 2, 2022  
                  Troy, New York



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**HON. JENNIFER G. SOBER**  
**COUNTY COURT JUDGE**