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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.  
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No. 76  
The People &c.,  
Respondent,  
v.  
Derek Backus,  
Appellant.

John A. Cirando, for appellant.  
James P. Maxwell, for respondent.

MEMORANDUM:

The order of the Appellate Division, insofar as  
appealed from, should be reversed, and so much of the order as  
authorized County Court to entertain a motion by the People to  
vacate the plea and set aside the conviction should be vacated.

The People have not appealed from so much of the order

as vacated the sentence imposed by County Court. We thus have no power to grant the People affirmative relief, and we therefore do not consider the People's argument that the consecutive terms imposed by County Court for vehicular assault and for driving while intoxicated were permissible (People v Carpenito, 80 NY2d 65, 68 [1992]). Defendant's sentence having been vacated, County Court is required to resentence defendant in accordance with the law, and lacks power to vacate the conviction or the plea (Matter of Kisloff v Covington, 73 NY2d 445, 451-452 [1989]; Matter of Campbell v Pesce, 60 NY2d 165, 169 [1983]).

\* \* \* \* \*

Order, insofar as appealed from, reversed and that part of the Appellate Division order that allowed for a motion by the People to vacate the plea and set aside the conviction vacated, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided May 11, 2010