

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1914-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MAGDY GHALY,

Defendant-Appellant.

Argued September 20, 2023 – Decided October 17, 2023

Before Judges Firko and Susswein.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Indictment No. 19-06-0620.

Paul Faugno, attorney, argued the cause for appellant (Faugno & Associates, LLC, attorneys: Paul Faugno, of counsel and on the brief).

William P. Miller, Assistant Prosecutor, argued the cause for respondent (Mark Musella, Bergen County Prosecutor, attorney; William P. Miller, of counsel and on the brief).

PER CURIAM

Defendant, Magdy Ghaly, appeals his jury trial conviction for third-degree theft by failure to make required disposition of property received, N.J.S.A. 2C:20-9. The trial proofs show defendant received and kept money from his insurance company for services a plastic surgeon provided to defendant's son. After receiving a check from his insurance company, defendant tried to negotiate the fee with the surgeon, but the surgeon refused to accept anything less than the full amount of the insurance check. Defendant refused to pay over the money.

Defendant contends the State failed to establish an agreement or known legal obligation necessary to satisfy the requirements of N.J.S.A. 2C:20-9.¹ The prosecutor candidly acknowledges the State's trial proofs "did not establish the requisite 'fiduciary-like' relationship between defendant and the wronged party." The State, therefore, "respectfully submits that this [c]ourt should issue an order vacating defendant's conviction and dismissing the matter with prejudice." In accordance with that concession, we vacate the judgment of conviction, remand, and dismiss the matter with prejudice.

¹ Defendant also contends the trial court erred in not instructing the jury on the defense of ignorance or mistake of law and erred in sentencing defendant to 120 days in county jail as a condition of probation. In view of the State's concession it failed to prove all elements of the offense, we need not address defendant's jury instruction and sentencing contentions.

Vacate and remand for further proceedings in accordance with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION