

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D21054  
O/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - October 7, 2008

ROBERT A. SPOLZINO, J.P.  
DAVID S. RITTER  
FRED T. SANTUCCI  
EDWARD D. CARNI, JJ.

---

2006-09500

DECISION & ORDER

The People, etc., respondent,  
v Teddy W. (Anonymous), appellant.

(Ind. No. 6817/99)

---

Lynn W. L. Fahey, New York, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Larry A. Sonnenshein and Julian L. Kalkstein of counsel), for respondent.

Appeal by the defendant from an amended judgment of the Supreme Court, Kings County (Dowling, J.), rendered September 11, 2006, revoking a sentence of probation previously imposed by the same court, upon a finding that he violated a condition thereof, upon his admission, and imposing a sentence of imprisonment upon his previous conviction of attempted assault in the first degree.

ORDERED that the amended judgment is reversed, on the law, and the sentence imposed thereon is vacated.

On October 12, 2000, upon his plea of guilty to attempted assault in the first degree, the defendant was sentenced to a term of six months imprisonment and five years probation. The sentencing court acknowledged that the defendant would receive credit for time served, which had already exceeded the six-month term. On August 4, 2005, a declaration of delinquency was filed, alleging that the defendant had violated a condition of his probation. During the violation of probation hearing, the defendant claimed that, since he had served time in prison before pleading guilty and the term of probation ran concurrently with the term of imprisonment, the probationary period had expired prior to the filing of the declaration of delinquency, taking into account credit for

November 18, 2008

Page 1.

PEOPLE v W. (ANONYMOUS), TEDDY

time served. After the Supreme Court rejected the defendant's claim, the defendant admitted that he had violated a condition of his probation.

The defendant's period of probation included the six-month jail term for which he received credit for time served (*see* Penal Law § 60.01[2][d]; *People v Zephrin*, 54 AD3d 1066; *People v Dawson*, 301 AD2d 659, 660). Therefore, the defendant's probationary period was completed in April 2005, before the declaration of delinquency was filed. Accordingly, we reverse the amended judgment revoking his probation and vacate the sentence imposed thereon.

SPOLZINO, J.P., RITTER, SANTUCCI and CARNI, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court