

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

D24697
W/kmg

_____AD3d_____

Argued - September 25, 2009

MARK C. DILLON, J.P.
THOMAS A. DICKERSON
PLUMMER E. LOTT
LEONARD B. AUSTIN, JJ.

2005-06759

DECISION & ORDER

The People, etc., respondent,
v Alaa Agina, a/k/a Alan Agina, appellant.

(Ind. No. 4238/02)

Lynn W. L. Fahey, New York, N.Y. (Lisa Napoli of counsel), for appellant.

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

Appeal by the defendant from an amended judgment of the Supreme Court, Queens County (Erlbaum, J.), rendered June 17, 2005, revoking a sentence of probation previously imposed by the same court (Grosso, J.), upon a finding that he had violated a condition thereof, after a hearing, and imposing a sentence of imprisonment and postrelease supervision upon his previous conviction of assault in the second degree.

ORDERED that the amended judgment is affirmed.

Contrary to the defendant's contention, he was provided with fair notice of the charged misconduct through the specification of the alleged violation of probation (*see* CPL 410.70[2]; *People v Crawford*, 61 AD3d 774, 775, *lv denied* 13 NY3d 743; *People v Simone*, 13 AD3d 71). The third specification of the violation of probation identified the defendant's conduct as including, inter alia, "Assault 2 (sub 02)," unlawful imprisonment, and endangering the welfare of a child, and was understood as such by defense counsel during summation. The court's finding that the defendant's conduct violated a condition of his probation, specifically that he lead a law-abiding

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life, was “based ‘upon a preponderance of the evidence which requires a residuum of competent legal evidence in the record’” (*People v Washington*, 55 AD3d 933, 934, quoting *People v Matula*, 258 AD2d 670, 670-671; *see* CPL 410.70[3]). Accordingly, we need not reach the defendant’s remaining contention.

DILLON, J.P., DICKERSON, LOTT and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court