

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

D31164
W/kmb

_____AD3d_____

Submitted - February 25, 2011

MARK C. DILLON, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
JEFFREY A. COHEN, JJ.

2010-09933

DECISION & ORDER

The People, etc., respondent,
v Jason Rosario, appellant.

(Ind. No. 185/10)

Maureen Galvin Dwyer, Northport, N.Y., for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Ronnie Jane Lamm of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Braslow, J.), rendered September 20, 2010, convicting him of identity theft in the third degree, upon his plea of guilty, and imposing a definite sentence of one year of imprisonment and restitution in the amount of \$2,437.

ORDERED that the judgment is modified, on the facts and as a matter of discretion in the interest of justice, by reducing the sentence to a definite term of eight months of imprisonment and restitution in the amount of \$2,437; as so modified, the judgment is affirmed.

The County Court enhanced the defendant's sentence to a definite term of one year of incarceration because he failed to appear at his scheduled sentencing dates of April 29, 2010, and June 24, 2010. The defendant failed to appear on those dates because, during April 2010, his mother was in Virginia, suffering from terminal cancer, and died in Virginia in May 2010 after a long bout with that illness.

Under the particular facts and circumstances of this case, including the defendant's background, as well as the recommendation of the Suffolk County Department of Probation that the

May 10, 2011

PEOPLE v ROSARIO, JASON

Page 1.

defendant's incarceration not exceed 60 days, we find it appropriate to exercise our discretion in the interest of justice to modify the sentence by reducing the term of imprisonment imposed to eight months and restitution in the amount of \$2,437 (*see People v Farrar*, 52 NY2d 302, 305; *People v Suite*, 90 AD2d 80, 85-86).

DILLON, J.P., DICKERSON, HALL and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court