

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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KA 07-01695

PRESENT: HURLBUTT, J.P., MARTOCHE, CENTRA, PERADOTTO, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KYLE J. FISH, DEFENDANT-APPELLANT.
(APPEAL NO. 1.)

MARK D. FUNK, ROCHESTER, FOR DEFENDANT-APPELLANT.

CINDY F. INTSCHERT, DISTRICT ATTORNEY, WATERTOWN (PATRICIA L. DZIUBA OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Jefferson County Court (Kim H. Martusewicz, J.), rendered July 11, 2007. The judgment revoked defendant's sentence of probation and imposed a sentence of imprisonment.

It is hereby ORDERED that the judgment so appealed from is unanimously modified on the law by vacating the sentence and as modified the judgment is affirmed, and the matter is remitted to Jefferson County Court for resentencing.

Memorandum: In each appeal, defendant appeals from a judgment revoking the sentence of probation imposed upon his respective convictions of burglary in the third degree (Penal Law § 140.20) and sentencing him to a term of imprisonment. We reject defendant's contention that the sentence in each appeal is unduly harsh or severe. We conclude, however, that there are discrepancies between the sentencing minutes and the certificates of conviction that cannot be resolved by this Court's request for amended certificates of conviction. Specifically, the record indicates that defendant was resentenced on only one of the two convictions of burglary in the third degree, but the two certificates of conviction in the record indicate that defendant was resentenced to a term of imprisonment in appeal No. 1 and to a term of imprisonment in appeal No. 2, to run concurrently with the sentence imposed in appeal No. 1. We therefore modify the judgment in each appeal by vacating the sentence, and we remit the matters to County Court for resentencing (*see People v Barnum*, 53 AD3d 1054; *People v Ingram*, 263 AD2d 959).

Entered: April 24, 2009

Patricia L. Morgan
Deputy Clerk of the Court