

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

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KA 07-01088

PRESENT: SCUDDER, P.J., HURLBUTT, PERADOTTO, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

STACEY L. WILLIAMS, DEFENDANT-APPELLANT.

GARY A. HORTON, PUBLIC DEFENDER, BATAVIA (BRIDGET L. FIELD OF COUNSEL), FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (WILLIAM G. ZICKL OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Genesee County Court (Robert C. Noonan, J.), entered April 27, 2007. The order directed defendant to pay restitution.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by vacating the amount of restitution ordered and as modified the order is affirmed, and the matter is remitted to Genesee County Court for a new hearing in accordance with the following Memorandum: Defendant was convicted upon his plea of guilty of burglary in the second degree (Penal Law § 140.25 [2]), and he now appeals from an order of restitution. Defendant contends that County Court erred in ordering him to pay restitution in the amount of \$4,812.35. We agree, for the same reason as that set forth in our decision in *People v Bunnell* (59 AD3d 942, amended on rearg ___ AD3d ___ [June 5, 2009], amended ___ AD3d ___ [June 19, 2009]). Although defendant failed to preserve his contention for our review (see CPL 470.05 [2]), preservation is not required because defendant has an essential "right to be sentenced as provided by law" (*People v Fuller*, 57 NY2d 152, 156), and that right is implicated here (see *Bunnell*, ___ AD3d ___ [June 19, 2009]). We therefore modify the order by vacating the amount of restitution ordered, and we remit the matter to County Court for a new hearing to determine the amount of restitution in compliance with Penal Law § 60.27.

Entered: July 2, 2009

Patricia L. Morgan
Clerk of the Court