

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

69

**KA 09-00270**

PRESENT: SMITH, J.P., CENTRA, FAHEY, GREEN, AND PINE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TRACI R. BECKER, DEFENDANT-APPELLANT.

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MULDOON & GETZ, ROCHESTER (MARTIN P. MCCARTHY, II, OF COUNSEL), FOR DEFENDANT-APPELLANT.

THOMAS E. MORAN, DISTRICT ATTORNEY, GENESEO (ERIC R. SCHIENER OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Livingston County Court (Dennis S. Cohen, J.), rendered December 4, 2008. The judgment convicted defendant, upon a nonjury verdict, of driving while intoxicated as a class E felony and failure to keep right.

It is hereby ORDERED that the judgment so appealed from is unanimously modified as a matter of discretion in the interest of justice by reducing the sentence imposed for driving while intoxicated as a class E felony to time served, a five-year period of probation and a fine of \$1,000 and as modified the judgment is affirmed, and the matter is remitted to Livingston County Court for further proceedings in accordance with the following Memorandum: Defendant appeals from a judgment convicting her after a bench trial of driving while intoxicated as a class E felony (Vehicle and Traffic Law § 1192 [3]; § 1193 [1] [c] [former (i)]) and failure to keep right (§ 1120 [a]), and sentencing her to an indeterminate term of incarceration of 1 to 3 years. We agree with defendant that the sentence imposed is unduly harsh and severe. Thus, as a matter of discretion in the interest of justice (see CPL 470.15 [6] [b]), we modify the judgment by reducing the sentence imposed for driving while intoxicated as a class E felony to time served, a five-year period of probation and a fine of \$1,000 (Penal Law § 60.01 [2] [d]; § 65.00 [3] [a] [i]; Vehicle and Traffic Law § 1193 [1] [c] [former (i)]). We remit the matter to Livingston County Court to specify the conditions of probation and to transfer supervision of probation to the appropriate probation department pursuant to CPL 410.80 (1). We have reviewed defendant's remaining contentions and conclude that they are without merit.

Entered: March 4, 2010

Patricia L. Morgan  
Clerk of the Court