

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

1197

KA 09-02278

PRESENT: SCUDDER, P.J., MARTOCHE, CENTRA, FAHEY, AND GREEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JONATHON A. VANANTWERP, DEFENDANT-APPELLANT.

ADAM H. VAN BUSKIRK, AURORA, FOR DEFENDANT-APPELLANT.

JON E. BUDELMANN, DISTRICT ATTORNEY, AUBURN (BRIAN N. BAUERSFELD OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Cayuga County Court (Thomas G. Leone, J.), rendered September 24, 2009. The judgment convicted defendant, upon his plea of guilty, of robbery in the second degree (two counts) and burglary in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously modified on the law by vacating the amount of restitution ordered and as modified the judgment is affirmed, and the matter is remitted to Cayuga County Court for a hearing to determine the amount of restitution.

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of two counts of robbery in the second degree (Penal Law § 160.10 [1]) and one count of burglary in the second degree (§ 140.25 [2]). We agree with defendant that County Court erred in directing him to pay restitution without first conducting a hearing on the amount of restitution to be paid. It is not clear from the record how the court determined the amount of restitution (see *People v White*, 266 AD2d 831) and, in any event, the record is insufficient to support "a finding [with respect] to the dollar amount of the fruits of the offense[s] and the actual out-of-pocket loss[es] to the victim[s]" (§ 60.27 [2]; see *People v Dibble* [appeal No. 2], 277 AD2d 969). We therefore modify the judgment by vacating the amount of restitution, and we remit the matter to Cayuga County Court for a hearing to determine the amount of restitution to be paid by defendant.

Entered: November 12, 2010

Patricia L. Morgan
Clerk of the Court