

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

1605

KA 09-02125

PRESENT: MARTOCHE, J.P., FAHEY, CARNI, LINDLEY, AND SCONIERS, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ROY HOOTEN, ALSO KNOWN AS ROY D. HOOTEN,
DEFENDANT-APPELLANT.
(APPEAL NO. 1.)

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 a judgment of the Genesee County Court (Robert C. Noonan, J.), rendered July 13, 2009. The judgment ordered defendant to pay restitution in the amount of \$20,841.08.

It is hereby ORDERED that said appeal from the judgment insofar as it imposes a sentence of incarceration is unanimously dismissed and the judgment is otherwise modified on the law by vacating the amount of restitution ordered and ordering defendant to pay restitution in the amount of \$19,516.77 and as modified the judgment is affirmed.

Memorandum: In appeal No. 2, defendant appeals from a judgment convicting him upon his plea of guilty of attempted burglary in the third degree (Penal Law §§ 110.00, 140.20) and imposing a sentence of incarceration and, in appeal No. 1, he appeals from a judgment that again imposes the identical sentence of incarceration and further orders him to pay restitution in the amount of \$20,841.08. Addressing first appeal No. 2, we note that defendant's sole contention is that the sentence is unduly harsh and severe, and we reject that contention. We agree with defendant in appeal No. 1, however, that the certificate of conviction reflects an amount of restitution that conflicts with the amount to which defendant stipulated. At the restitution hearing, County Court indicated that one of the restitution claims had been withdrawn, reducing the total amount of restitution requested by the People. Defense counsel then indicated that defendant was prepared to stipulate to restitution in the amount of \$18,587.40, based on the remaining claims, together with the 5% surcharge of \$929.37, for a total restitution figure of \$19,516.77. The People agreed to that amount and the court accepted the stipulation. We therefore modify the judgment in appeal No. 1 by vacating the amount of restitution ordered and ordering defendant to

pay restitution in the amount of \$19,516.77 in accordance with the stipulation. We dismiss the appeal from the judgment in appeal No. 1 insofar as it imposes a sentence of incarceration inasmuch as we have addressed that issue in appeal No. 2.

Entered: February 10, 2011

Patricia L. Morgan
Clerk of the Court