

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

71

KA 11-00857

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, SCONIERS, AND VALENTINO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ROBBIE L. ALLEN, DEFENDANT-APPELLANT.
(APPEAL NO. 2.)

LEANNE LAPP, PUBLIC DEFENDER, CANANDAIGUA (MARK C. DAVISON OF COUNSEL), FOR DEFENDANT-APPELLANT.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA (JAMES B. RITTS OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Ontario County Court (Frederick G. Reed, A.J.), rendered April 5, 2011. The judgment convicted defendant, upon his plea of guilty, of bail jumping in the second degree.

It is hereby ORDERED that said appeal is unanimously dismissed.

Memorandum: In appeal No. 1, defendant appeals from a judgment convicting him upon his plea of guilty of two counts of criminal sale of a controlled substance in the third degree (Penal Law § 220.39 [1]), and, in appeal No. 2, he appeals from a separate judgment convicting him, also upon his plea of guilty, of bail jumping in the second degree (§ 215.56). We note at the outset that defendant raises no challenge to the judgment in appeal No. 1, and we therefore dismiss the appeal from that judgment (*see* CPL 470.60 [1]; *People v Allen*, 93 AD3d 1340, 1340-1341, *lv denied* 19 NY3d 956). With respect to appeal No. 2, defendant challenges only the sentence, but concedes that he has been resentenced upon the judgment in that appeal. Consequently, inasmuch as "the initial sentence has been super[s]eded[,] any issue with respect to sentencing on th[at] appeal is now moot" (*People v Gannon*, 2 AD3d 1214, 1214; *see People v Haywood*, 203 AD2d 966, 966, *lv denied* 83 NY2d 967).

Entered: February 8, 2013

Frances E. Cafarell
Clerk of the Court