

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

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**KA 09-00380**

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

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

THOMAS C. RICKS, DEFENDANT-APPELLANT.

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MICHAEL J. STACHOWSKI, P.C., BUFFALO (MICHAEL J. STACHOWSKI OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (MATTHEW B. POWERS OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Erie County (Penny M. Wolfgang, J.), rendered July 17, 2006. The judgment convicted defendant, upon his plea of guilty, of sodomy in the first degree (five counts) and endangering the welfare of the child.

It is hereby ORDERED that the judgment so appealed from is unanimously modified on the law by vacating the sentence and as modified the judgment is affirmed, and the matter is remitted to Supreme Court, Erie County, for resentencing in accordance with the following Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of, inter alia, five counts of sodomy in the first degree (Penal Law former § 130.50 [4]). We agree with defendant that Supreme Court erred when, over his objection, it admitted in evidence at the second felony offender hearing the Colorado fingerprint record and the Colorado judgment of conviction without the certifications required by CPLR 4540 (c) (see *People v James*, 4 AD3d 774; *People v Acebedo*, 156 AD2d 369). We therefore modify the judgment by vacating the sentence, and we remit the matter to Supreme Court for resentencing "to allow the People to overcome the technical defects of their proof" (*James*, 4 AD3d at 775; see *People v Hines*, 90 AD2d 621).

Entered: March 19, 2010

Patricia L. Morgan  
Clerk of the Court