

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

938

**KA 07-02151**

PRESENT: HURLBUTT, J.P., MARTOCHE, FAHEY, CARNI, AND PINE, JJ.

---

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MARCIA A. WEBER, DEFENDANT-APPELLANT.  
(APPEAL NO. 2.)

---

GARY A. HORTON, PUBLIC DEFENDER, BATAVIA (BRIDGET L. FIELD OF COUNSEL), FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (DAVID E. GANN OF COUNSEL), FOR RESPONDENT.

---

Appeal from an order of the Genesee County Court (Robert C. Noonan, J.), entered July 24, 2007. The order directed defendant to pay restitution.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by vacating the amount of restitution ordered and as modified the order is affirmed, and the matter is remitted to Genesee County Court for a new hearing in accordance with the following Memorandum: On appeal from an order amending her sentence to include restitution, defendant contends, inter alia, that County Court erred in delegating its responsibility to conduct a restitution hearing to its court attorney. We agree, for the same reason as that set forth in our decision in *People v Bunnell* (59 AD3d 942, amended on rearg \_\_\_ AD3d \_\_\_ [June 5, 2009], amended \_\_\_ AD3d \_\_\_ [June 19, 2009]). Although defendant did not preserve her contention for our review, preservation is not required inasmuch as the " 'essential nature' of the right to be sentenced as provided by law" is implicated (*People v Fuller*, 57 NY2d 152, 156). We therefore modify the order by vacating the amount of restitution ordered, and we remit the matter to County Court for a new hearing to determine the amount of restitution in compliance with Penal Law § 60.27.

Entered: July 2, 2009

Patricia L. Morgan  
Clerk of the Court