

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

942

KA 07-01839

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KENNETH C. DONOHUE, DEFENDANT-APPELLANT.

WYOMING COUNTY-ATTICA LEGAL AID BUREAU, WARSAW (EDWARD L. CHASSIN OF COUNSEL), FOR DEFENDANT-APPELLANT.

THOMAS E. MORAN, DISTRICT ATTORNEY, GENESEO (ERIC R. SCHIENER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Livingston County Court (Dennis S. Cohen, J.), rendered June 28, 2007. The judgment revoked defendant's sentence of probation and imposed a sentence of imprisonment.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment revoking the sentence of probation imposed upon his conviction of sexual abuse in the first degree (Penal Law § 130.65 [3]) and sentencing him to a term of imprisonment. We conclude that the People met their burden of establishing by a preponderance of the evidence that defendant violated the terms and conditions of his probation (*see generally People v Bergman*, 56 AD3d 1225, *lv denied* 12 NY3d 756). The People established that defendant came into contact with two minor children, missed four appointments for sex offender counseling, and failed to pay certain fees and a surcharge in a timely manner, all in violation of the terms and conditions of defendant's probation. Although defendant offered excuses for his various violations, County Court was entitled to discredit those excuses and instead to credit the testimony of the People's witnesses (*see generally People v Cruz*, 35 AD3d 898, *lv denied* 8 NY3d 845). We further conclude that the sentence is not unduly harsh or severe.

Entered: July 2, 2009

Patricia L. Morgan
Clerk of the Court