

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

1275

KA 08-02091

PRESENT: SCUDDER, P.J., MARTOCHE, SMITH, CARNI, AND GREEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ALEXANDER E. STRAUTS, DEFENDANT-APPELLANT.

CARL M. DARNALL, FAIRPORT, FOR DEFENDANT-APPELLANT.

DONALD H. DODD, DISTRICT ATTORNEY, OSWEGO (MICHAEL G. CIANFARANO OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Oswego County Court (Walter W. Hafner, Jr., J.), rendered July 21, 2008. 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 two counts of felony driving while intoxicated (Vehicle and Traffic Law § 1192 [2], [3]; § 1193 [1] [c] [former (ii)]) and sentencing him to an indeterminate term of imprisonment. We reject the contention of defendant that the People failed to establish by a preponderance of the evidence that he violated the conditions of his probation (see *People v Bergman*, 56 AD3d 1225, *lv denied* 12 NY3d 756). The People established that defendant failed to complete three drug and alcohol treatment programs, missed several probation appointments, and failed to pay the mandatory fines and a surcharge in a timely manner, all in violation of the conditions of his 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" (*People v Donohue*, 64 AD3d 1187, 1188). Further, the court did not abuse its discretion in denying defendant's request for an adjournment of the violation of probation hearing to obtain medical records (*cf. Chamberlain v Dundon* [appeal No. 2], 61 AD3d 1378, 1379). Finally, the sentence is not unduly harsh or severe.

Entered: November 13, 2009

Patricia L. Morgan
Clerk of the Court