

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

660

KA 09-00487

PRESENT: SMITH, J.P., CARNI, LINDLEY, SCONIERS, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MATTHEW W.B., DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (KRISTIN M. PREVE OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (J. MICHAEL MARION OF COUNSEL), FOR RESPONDENT.

Appeal from an adjudication of the Supreme Court, Erie County (M. William Boller, A.J.), rendered February 24, 2009. The adjudication revoked defendant's sentence of probation and imposed a sentence of imprisonment.

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

Memorandum: Defendant was adjudicated a youthful offender based upon his plea of guilty of grand larceny in the fourth degree (Penal Law § 155.30 [1]). On appeal from an adjudication revoking the sentence of probation imposed upon the youthful offender finding and sentencing him to an indeterminate term of imprisonment, defendant contends that Supreme Court erred in imposing a DNA databank fee in violation of section 60.02 (3). That contention is not properly before us inasmuch as that fee was imposed in the prior youthful offender adjudication from which no appeal was taken. The sentence is not unduly harsh or severe.

Entered: May 7, 2010

Patricia L. Morgan
Clerk of the Court