

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

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KA 10-00830

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, SCONIERS, AND MARTOCHE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

YOKOHIRO VIDAL ORTIZ, ALSO KNOWN AS ORTIZ,
DEFENDANT-APPELLANT.

JOHN E. TYO, SHORTSVILLE, FOR DEFENDANT-APPELLANT.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA (HEATHER A. PARKER
OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Ontario County Court (Craig J. Doran, J.), rendered September 8, 2009. 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 previously imposed upon his conviction of assault in the second degree (Penal Law § 120.05 [6]) and criminal mischief in the third degree (§ 145.05 [2]) and sentencing him to concurrent terms of imprisonment. Contrary to defendant's contention, County Court properly determined 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 People v Pringle*, 72 AD3d 1629, 1629, *lv denied* 15 NY3d 855; *People v Donohue*, 64 AD3d 1187, 1188; *People v Bergman*, 56 AD3d 1225, *lv denied* 12 NY3d 756). The People provided the necessary "residuum of competent legal evidence" (*Pringle*, 72 AD3d at 1630 [internal quotation marks omitted]), and "the decision to revoke his probation will not be disturbed, [absent a] clear abuse of discretion" (*Bergman*, 56 AD3d 1225 [internal quotation marks omitted]).

Entered: April 20, 2012

Frances E. Cafarell
Clerk of the Court