

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

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KA 12-00447

PRESENT: SCUDDER, P.J., PERADOTTO, SCONIERS, VALENTINO, AND MARTOCHE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DYLAN BARCLAY, ALSO KNOWN AS DYLAN A. BARCLAY,
DEFENDANT-APPELLANT.

BRIDGET L. FIELD, ROCHESTER, FOR DEFENDANT-APPELLANT.

Appeal from a judgment of the Genesee County Court (Robert C. Noonan, J.), rendered August 26, 2011. The judgment convicted defendant, upon his plea of guilty, of criminal sexual act in the first degree.

It is hereby ORDERED that the judgment so appealed from is unanimously modified on the law by vacating the DNA databank fee, sex offender registration fee, and supplemental sex offender victim fee and as modified the judgment is affirmed.

Memorandum: On appeal from a judgment convicting him as a juvenile offender upon his guilty plea of criminal sexual act in the first degree (Penal Law § 130.50 [1]), defendant contends that his bargained-for sentence of imprisonment of 2 to 6 years is unduly harsh and severe and that County Court erred in directing him to pay a DNA databank fee, a sex offender registration fee, and a supplemental sex offender victim fee. Based on our review of the record, we conclude that there is no basis for modifying the sentence of imprisonment as a matter of discretion in the interest of justice (*see* CPL 470.15 [3] [c]). We conclude, however, that the fees imposed must be vacated because defendant was sentenced as a juvenile offender (*see* Penal Law §§ 60.00 [2]; 60.10; *People v Stump*, 100 AD3d 1457, 1458). We therefore modify the judgment accordingly.

Entered: April 26, 2013

Frances E. Cafarell
Clerk of the Court