

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

455

KA 09-01961

PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, LINDLEY, AND VALENTINO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ROBERT FULLEN, JR., DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JANE I. YOON OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (NANCY GILLIGAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (David D. Egan, J.), rendered July 30, 2009. The judgment convicted defendant, upon a jury verdict, of rape in the second degree and criminal sexual act in the second degree.

It is hereby ORDERED that the case is held, the decision is reserved and the matter is remitted to Supreme Court, Monroe County, for further proceedings in accordance with the following Memorandum: On appeal from a judgment convicting him of rape in the second degree (Penal Law § 130.30 [1]) and criminal sexual act in the second degree (§ 130.45 [1]), defendant contends that Supreme Court committed reversible error in denying him access to the victim's psychiatric records. Those records, which the court reviewed in camera, have not been included in the record on appeal. Inasmuch as the present record on appeal does not permit us to review defendant's contention, we hold the case, reserve decision and remit the matter to Supreme Court to conduct a reconstruction hearing with respect to the missing records (*see generally People v Yavru-Sakuk*, 98 NY2d 56, 60).

Entered: June 13, 2014

Frances E. Cafarell
Clerk of the Court