

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

596

KA 18-00912

PRESENT: CENTRA, J.P., NEMOYER, TROUTMAN, WINSLOW, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KAESEAN HALL, DEFENDANT-APPELLANT.

JEFFREY WICKS, PLLC, ROCHESTER (JEFFREY WICKS 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
(Charles A. Schiano, Jr., J.), rendered March 7, 2018. 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 pleaded guilty to assault in the second
degree (Penal Law § 120.05 [1]) and was sentenced to probation.
Supreme Court subsequently determined, following a hearing, that
defendant had violated a condition of his probation by attacking a
stranger on a street corner. The court therefore revoked defendant's
probation and imposed a different sentence. Defendant appeals, and we
affirm.

Defendant contends that he did not violate his probation because
he justifiably attacked the victim in self-defense (*see generally*
Penal Law § 35.15 [1]). Even assuming, arguendo, that the defense of
justification applies at a probation violation hearing to the same
extent as at a criminal trial (*cf. People v Miller*, 289 AD2d 704, 705
[3d Dept 2001]; *People v West*, 283 AD2d 721, 722 [3d Dept 2001], *lv*
denied 96 NY2d 836 [2001]), we reject defendant's contention for the
following three reasons. First, defendant's own testimony explicitly
characterized the underlying incident as a "mutual fight" in which he
"got the best of" the victim, and the defense of justification is
statutorily unavailable for "combat by agreement not specifically
authorized by law" (§ 35.15 [1] [c]; *see Matter of Kim H.*, 112 AD2d
160, 161 [2d Dept 1985]). Second, defendant's own testimony
demonstrated that he "lacked a subjective belief that his use of . . .
physical force was necessary to protect himself against [any] use or
imminent use of . . . physical force" by the victim (*People v Box*, 181

AD3d 1238, 1240 [4th Dept 2020], *lv denied* 35 NY3d 1025 [2020], *cert denied* – US –, 141 S Ct 1099 [2021]; see *People v Grady*, 40 AD3d 1368, 1371 [3d Dept 2007], *lv denied* 9 NY3d 923 [2007]). Third, any “right to use [physical] force [in self-defense] terminate[d] at the point where [defendant could] no longer reasonably believe that the [victim] still pose[d] a threat to him” (*People v Colecchia*, 251 AD2d 5, 6 [1st Dept 1998], *lv denied* 92 NY2d 895 [1998]), and the police officer’s eyewitness testimony established that defendant continued attacking the victim even after the victim was lying “helpless” and “unconscious” on the ground.

Entered: June 17, 2021

Mark W. Bennett
Clerk of the Court