

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

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CA 21-01733

PRESENT: WHALEN, P.J., SMITH, CENTRA, WINSLOW, AND BANNISTER, JJ.

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KIM M. CAPOZZOLO, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

ARCANGELO CAPOZZOLO, DEFENDANT-APPELLANT.

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HOGANWILLIG, PLLC, BUFFALO (KENNETH A. OLENA OF COUNSEL), FOR  
DEFENDANT-APPELLANT.

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Appeal from an order of the Supreme Court, Erie County (E. Jeannette Ogden, J.), entered November 23, 2021. The order committed defendant to the Erie County Correctional Facility for 30 days.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: In this civil contempt proceeding, defendant appeals from an order that, upon a finding of willful contempt, committed him to the Erie County Correctional Facility for a term of 30 days. Defendant contends, inter alia, that the punishment of incarceration was an abuse of the civil contempt statute. Even assuming, arguendo, that the issues raised on appeal are preserved for our review, we are unable to determine whether defendant's contentions have merit inasmuch as the 19-page record before us does not contain sufficient information to enable us to determine whether Supreme Court properly imposed a punishment of jail time. Defendant, as the appellant, "submitted this appeal on an incomplete record and must suffer the consequences" (*Matter of Santoshia L.*, 202 AD2d 1027, 1028 [4th Dept 1994]; see *Matter of Jon Z. [Margaret Z.]*, 151 AD3d 1854, 1855 [4th Dept 2017]).

Entered: September 30, 2022

Ann Dillon Flynn  
Clerk of the Court