

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

86

KA 23-00877

PRESENT: LINDLEY, J.P., CURRAN, OGDEN, GREENWOOD, AND HANNAH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOSEPH T. CASTIGLIONE, DEFENDANT-APPELLANT.

CHARLES J. GREENBERG, AMHERST, FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, SPECIAL PROSECUTOR, ROCHESTER (MARTIN P. MCCARTHY, II, OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Seneca County Court (Barry L. Porsch, J.), rendered April 17, 2023. The judgment revoked defendant's sentence of probation and imposed a sentence of incarceration.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant was convicted upon his plea of guilty of driving while ability impaired by drugs as a class E felony (Vehicle and Traffic Law §§ 1192 [4]; 1193 [1] [c] [i] [A]) and was sentenced to a period of probation. Defendant now appeals from a judgment revoking the sentence of probation and sentencing him, upon a determination that he violated the conditions of probation, to an indeterminate term of incarceration.

Contrary to defendant's contention, the People established by a preponderance of the evidence that he violated a condition of his probation (*see* CPL 410.70 [3]; *People v Bailey*, 181 AD3d 1243, 1244 [4th Dept 2020]). Although the People did not offer into evidence the terms and conditions of probation, County Court later stated when rendering its determination that it took judicial notice of them (*see generally People v Williams*, 164 AD3d 845, 845-846 [2d Dept 2018]; *People v Hill*, 148 AD3d 1469, 1470 [3d Dept 2017], *lv denied* 29 NY3d 1080 [2017]). Based on the evidence presented at the hearing, the court determined that defendant was aware of those terms and conditions and that he violated them "by absconding and fail[ing] to report to probation as required" (*see People v Pruett*, 191 AD3d 1423, 1423 [4th Dept 2021], *lv denied* 36 NY3d 1099 [2021]; *Bailey*, 181 AD3d at 1244).

Entered: February 11, 2026

Ann Dillon Flynn
Clerk of the Court