

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

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KA 10-01178

PRESENT: SMITH, J.P., FAHEY, PERADOTTO, LINDLEY, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DARRYL P., DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (CHRISTINE M. COOK OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (JAMES P. MAXWELL OF COUNSEL), FOR RESPONDENT.

Appeal from an adjudication of the Onondaga County Court (William D. Walsh, J.), rendered November 2, 2009. The adjudication revoked defendant's sentence of probation and imposed a sentence of imprisonment.

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

Memorandum: Defendant was adjudicated a youthful offender based upon his plea of guilty of aggravated criminal contempt (Penal Law § 215.52) and was sentenced to five years of probation. Defendant appeals from an adjudication revoking the sentence of probation and sentencing him to an indeterminate term of 1 to 3 years of incarceration. Contrary to the People's contention, we conclude that this appeal is not moot (*cf. People v Mackey*, 79 AD3d 1680, 1681, *lv denied* 16 NY3d 860).

Contrary to defendant's contention, County Court did not abuse its discretion in denying his request for an adjournment (*see People v Aikey*, 94 AD3d 1485, 1486, *lv denied* 19 NY3d 956). Contrary to defendant's further contention, the determination of the court that he violated the terms of his probation is not against the weight of the evidence (*see People v Garries*, 299 AD2d 858, 858, *lv denied* 99 NY2d 558; *see generally People v Bleakley*, 69 NY2d 490, 495).

Entered: April 26, 2013

Frances E. Cafarell
Clerk of the Court