

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

1175

KA 12-01266

PRESENT: SMITH, J.P., CENTRA, FAHEY, CARNI, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TAJENEE J., DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (NICHOLAS P. DIFONZO OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (MICHAEL J. HILLERY OF COUNSEL), FOR RESPONDENT.

Appeal from an adjudication of the Supreme Court, Erie County (M. William Boller, A.J.), rendered June 8, 2012. The adjudication revoked defendant's probation and imposed a sentence of imprisonment.

It is hereby ORDERED that the adjudication so appealed from is unanimously modified on the law by directing that all of the sentences shall run concurrently with respect to each other and as modified the adjudication is affirmed.

Memorandum: Defendant was adjudicated a youthful offender on January 6, 2012 and was sentenced to, inter alia, concurrent terms of five years of probation with respect to the three crimes of which he was convicted. Defendant subsequently admitted that he had violated the conditions of his probation, and he now appeals from an adjudication that revoked his probation and sentenced him to three terms of incarceration of 1½ to 4 years, two of which were ordered to run consecutively to each other. Defendant's sentence thus aggregates to a term of incarceration of 2⅔ to 8 years, and we agree with defendant that the sentence is illegal. "[H]aving adjudicated defendant a youthful offender, [Supreme C]ourt was without authority to impose consecutive sentences in excess of four years" (*People v Jorge N.T.*, 70 AD3d 1456, 1458, lv denied 14 NY3d 889 [internal quotation marks omitted]; see *People v Cory T.*, 59 AD3d 1063, 1064). We therefore modify the adjudication by directing that all of the sentences shall run concurrently with respect to each other (see *People v Christopher T.*, 48 AD3d 1131, 1131-1132). The sentence as modified is not unduly harsh or severe.

Entered: November 15, 2013

Frances E. Cafarell
Clerk of the Court