

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

851

**KA 14-00392**

PRESENT: SCUDDER, P.J., CARNI, LINDLEY, VALENTINO, AND WHALEN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

SHELBY ROBERTSON, DEFENDANT-APPELLANT.

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DAVID J. FARRUGIA, PUBLIC DEFENDER, LOCKPORT (JOSEPH G. FRAZIER OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. VIOLANTE, DISTRICT ATTORNEY, LOCKPORT (THOMAS H. BRANDT OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Niagara County Court (Sara S. Farkas, J.), rendered June 26, 2012. 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 appeals from a judgment revoking the sentence of probation imposed upon his conviction of possessing a sexual performance by a child (Penal Law § 263.16) and sentencing him to an indeterminate term of incarceration. Contrary to defendant's contention, we conclude that the People established by the requisite preponderance of the evidence that defendant violated the terms and conditions of his probation (*see* CPL 410.70 [3]; *People v Ortiz*, 94 AD3d 1436, 1436, *lv denied* 19 NY3d 999). The evidence adduced at the hearing established that defendant violated the terms and conditions of his probation by possessing a computer and computer parts, failing to "attend, actively participate and remain in" a required treatment program, and failing to comply with the Sex Offender Registration Act requirement regarding registration of a change of address (*see* Correction Law § 168-f [4]).

Finally, the sentence is not unduly harsh or severe.

Entered: July 2, 2015

Frances E. Cafarell  
Clerk of the Court