

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

**346**

**KA 15-00101**

PRESENT: WHALEN, P.J., PERADOTTO, LINDLEY, DEJOSEPH, AND WINSLOW, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAMES FOX, DEFENDANT-APPELLANT.

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LEANNE LAPP, PUBLIC DEFENDER, CANANDAIGUA (MARK C. DAVISON OF COUNSEL), FOR DEFENDANT-APPELLANT.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA (HEATHER PARKER HINES OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Ontario County Court (Craig J. Doran, J.), entered August 18, 2014. 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 previously imposed upon his conviction of failure to register and/or verify as a sex offender (Correction Law §§ 168-f [4]; 168-t) and sentencing him to a term of incarceration based on his admission that he violated three terms and conditions of probation. Defendant contends that his admission to having violated probation by failing to participate in sex offender treatment should be vacated because his refusal to admit the underlying sex offense was not a refusal to participate in sex offender treatment. That contention is unpreserved for our review because defendant "failed to move to withdraw his admission or to vacate the judgment revoking his sentence of probation on that ground" (*People v Obbagy*, 56 AD3d 1223, 1224 [4th Dept 2008], *lv denied* 11 NY3d 928 [2009]; see *People v Hamdy*, 46 AD3d 1383, 1383 [4th Dept 2007], *lv denied* 10 NY3d 765 [2008]), and we decline to exercise our power to address that contention as a matter of discretion in the interest of justice (see CPL 470.15 [6] [a]). We note in any event that defendant admitted to two other violations, which provide a sufficient basis for finding a violation of probation (see *Hamdy*, 46 AD3d at 1383).

Entered: March 16, 2018

Mark W. Bennett  
Clerk of the Court