

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

**1117**

**KA 12-01650**

PRESENT: SMITH, J.P., DEJOSEPH, CURRAN, AND SCUDDER, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DAVID A. HENNIGAN, DEFENDANT-APPELLANT.  
(APPEAL NO. 1.)

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LEANNE LAPP, PUBLIC DEFENDER, CANANDAIGUA (CARA A. WALDMAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA (MELANIE J. BAILEY OF COUNSEL), FOR RESPONDENT.

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Appeal from a resentence of the Ontario County Court (Craig J. Doran, J.), rendered July 2, 2012. Defendant was resentenced upon his conviction of assault in the second degree, assault on a peace officer, police officer, fireman, or emergency medical services professional and attempted criminal possession of a weapon in the second degree.

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

Memorandum: In appeal No. 1, defendant appeals from a judgment convicting him upon his plea of guilty of, inter alia, assault in the second degree (Penal Law § 120.05 [3]) and, in appeal No. 2, defendant appeals from a judgment convicting him upon his plea of guilty of, inter alia, burglary in the second degree (§ 140.25 [2]). Although the notice of appeal in appeal No. 1 is taken from the judgment entered May 21, 2012, and not the resentence on July 2, 2012, we exercise our discretion to treat the appeal as taken from the resentence (see CPL 460.10 [6]). We reject defendant's contention in appeal Nos. 1 and 2 that the concurrent sentences are unduly harsh and severe.

Entered: December 23, 2016

Frances E. Cafarell  
Clerk of the Court