

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

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KA 12-02154

PRESENT: SMITH, J.P., FAHEY, LINDLEY, SCONIERS, AND VALENTINO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MARC A. GROSSKOPF, DEFENDANT-APPELLANT.

KATHLEEN E. CASEY, BARKER, FOR DEFENDANT-APPELLANT.

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

Appeal from a judgment of the Niagara County Court (Matthew J. Murphy, III, J.), rendered September 19, 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 attempted assault in the second degree (Penal Law §§ 110.00, 120.05 [2]) and sentencing him to an indeterminate term of incarceration. Contrary to defendant's contentions, we conclude that the violation of probation petition was not based on pretext and 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).

Entered: March 21, 2014

Frances E. Cafarell
Clerk of the Court