

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

1003

**KA 11-00851**

PRESENT: CENTRA, J.P., FAHEY, WHALEN, AND DEJOSEPH, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CLEVELAND SESSONS, DEFENDANT-APPELLANT.

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FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (PHILIP ROTHSCHILD OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (VICTORIA M. WHITE OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Onondaga County Court (Joseph E. Fahey, J.), rendered April 12, 2011. The judgment convicted defendant, upon his plea of guilty, of assault in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously modified on the law by reducing the period of postrelease supervision to a period of 1½ years and as modified the judgment is affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon a guilty plea to assault in the second degree (Penal Law § 120.05 [2]) and sentencing him to a three-year determinate term of imprisonment followed by a five-year term of postrelease supervision.

We conclude that the sentence is illegal insofar as it imposes a five-year period of postrelease supervision for a class D violent felony (see Penal Law §§ 70.02 [c]; 70.45 [2] [e]). "Although [that] issue was not raised before the [sentencing] court . . . , we cannot allow an [illegal] sentence to stand" (*People v Hughes*, 112 AD3d 1380, 1381 [internal quotation marks omitted]). We therefore modify the judgment by reducing the period of postrelease supervision to a period of 1½ years.

We have considered defendant's remaining contentions and conclude that they are moot in light of our determination (see *People v Swanson*, 43 AD3d 1331, 1332, lv denied 9 NY3d 1010).

Entered: October 3, 2014

Frances E. Cafarell  
Clerk of the Court