

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

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KA 11-00291

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAMES TUCKER, DEFENDANT-APPELLANT.

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

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (MARIA MALDONADO OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Onondaga County (John J. Brunetti, A.J.), rendered October 29, 2010. The appeal was held by this Court by order entered May 9, 2014, decision was reserved and the matter was remitted to Supreme Court, Onondaga County, for further proceedings (117 AD3d 1581).

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

Memorandum: We previously determined on defendant's appeal from a judgment convicting him upon a jury verdict of criminal possession of a controlled substance in the third degree (Penal Law § 220.16 [1]) and criminal possession of a controlled substance in the fifth degree (§ 220.06 [5]) that the verdict is not against the weight of the evidence (*People v Tucker*, 117 AD3d 1581, 1582). Aside from determining that issue, we held the case, reserved decision, and remitted the matter to Supreme Court to conduct a hearing on defendant's CPL 330.30 motion to set aside the verdict on the ground of alleged juror misconduct (*id.*). On remittal, however, defendant withdrew his CPL 330.30 motion. Thus, the only issue remaining for us to address is the severity of the sentence and, contrary to defendant's contention, we conclude that the sentence is not unduly harsh or severe.

Entered: March 20, 2015

Frances E. Cafarell
Clerk of the Court