

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

**364**

**KA 11-02123**

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, AND DEJOSEPH, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DANIEL SIERRA, DEFENDANT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (DAVID R. JUERGENS OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (LEAH R. MERVINE OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Monroe County Court (James J. Piampiano, J.), rendered September 15, 2011. The judgment convicted defendant, upon his plea of guilty, of aggravated driving while intoxicated, a class D felony.

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

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of felony aggravated driving while intoxicated (Vehicle and Traffic Law §§ 1192 [2-a] [a]; 1193 [1] [c] [ii]). Contrary to defendant's contention, County Court properly sentenced him pursuant to Penal Law § 60.21 to a five-year period of probation to run consecutively to his indeterminate term of imprisonment (see Vehicle and Traffic Law § 1193 [1] [c] [iii]; *People v Segatol-Islami*, 121 AD3d 1575, 1577; *People v O'Brien*, 111 AD3d 1028, 1029). "Inasmuch as the plain language of the statutes requires a sentencing court to impose a period of probation or conditional discharge in addition to any fine or term of imprisonment for convictions pursuant to Vehicle and Traffic Law § 1192, the Legislature clearly intended this type of cumulative sentence for felony driving while intoxicated convictions" (*People v Brainard*, 111 AD3d 1162, 1164).

Entered: March 27, 2015

Frances E. Cafarell  
Clerk of the Court