

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

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KA 12-01584

PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, CARNI, AND SCONIERS, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

FLOYD VANHOOSER, DEFENDANT-APPELLANT.
(APPEAL NO. 1.)

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

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (JAMES P. MAXWELL OF COUNSEL), FOR RESPONDENT.

Appeal from a resentence of the Onondaga County Court (William D. Walsh, J.), rendered September 13, 2011. Defendant was resentenced upon his conviction of attempted burglary in the second degree.

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

Memorandum: Defendant was convicted upon his plea of guilty of attempted burglary in the second degree (Penal Law §§ 110.00, 140.25 [2]) and sentenced as a predicate felon to 7 years of incarceration and 5 years of postrelease supervision. County Court later resentenced defendant as a second violent felony offender to the same sentence, and defendant now appeals from the resentence. "Defendant failed to preserve for our review his contention that the [8½-year] gap between his original sentence and his resentence violated his statutory right to have his sentence pronounced 'without unreasonable delay' " (*People v Smikle*, 112 AD3d 1357, 1358, lv denied 22 NY3d 1141). We decline to exercise our power to review that contention as a matter of discretion in the interest of justice (see CPL 470.15 [3] [c]).

Entered: March 27, 2015

Frances E. Cafarell
Clerk of the Court