

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

868

**KA 14-01833**

PRESENT: CARNI, J.P., CURRAN, TROUTMAN, WINSLOW, AND SCUDDER, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

FRANKLIN TERNOOIS, III, DEFENDANT-APPELLANT.

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JAMES S. KERNAN, PUBLIC DEFENDER, LYONS (PETER G. CHAMBERS OF COUNSEL), FOR DEFENDANT-APPELLANT.

CHRISTOPHER BOKELMAN, ACTING DISTRICT ATTORNEY, LYONS (BRUCE A. ROSEKRANS OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Wayne County Court (Dennis M. Kehoe, J.), rendered September 23, 2014. The judgment convicted defendant, upon his plea of guilty, of sexual abuse in the first degree.

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

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of sexual abuse in the first degree (Penal Law § 130.65 [3]), defendant contends that County Court abused its discretion in denying his request to adjudicate him a youthful offender. We reject that contention. " 'The determination . . . whether to grant . . . youthful offender status rests within the sound discretion of the court and depends upon all the attending facts and circumstances of the case' " (*People v Dawson*, 71 AD3d 1490, 1490, *lv denied* 15 NY3d 749). Here, the record reflects that the court considered the relevant facts and circumstances in denying defendant's request. Significantly, the record establishes that defendant twice violated the terms of interim probation that the court imposed between the time of the plea and sentencing (*see People v Lewis*, 128 AD3d 1400, 1401, *lv denied* 25 NY3d 1203; *People v Kocher*, 116 AD3d 1301, 1301-1303). We therefore conclude that the court did not abuse its discretion in denying defendant's request.

Entered: June 9, 2017

Frances E. Cafarell  
Clerk of the Court