

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

575

**KA 18-02437**

PRESENT: CARNI, J.P., LINDLEY, CURRAN, BANNISTER, AND DEJOSEPH, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOSEPH M. TORNABENE, DEFENDANT-APPELLANT.

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THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (JOHN J. MORRISSEY OF COUNSEL), FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (ROBERT J. SHOEMAKER OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Genesee County Court (Charles N. Zambito, J.), rendered September 11, 2018. The judgment revoked defendant's sentence of probation and imposed a sentence of incarceration.

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

Memorandum: Defendant pleaded guilty to attempted robbery in the second degree (Penal Law §§ 110.00, 160.10 [2] [a]) and, pursuant to the plea agreement, County Court sentenced him to a five-year term of probation. Shortly after being placed on probation, defendant violated the terms and conditions of probation and entered an admission in return for a promise from the court to sentence him to no more than two years in prison plus three years of postrelease supervision (PRS) and the court imposed that sentence.

Defendant now contends that his waiver of the right to appeal is invalid and that the period of PRS is unduly harsh and severe. Even assuming, arguendo, that the waiver of the right to appeal is unenforceable (see *People v Love*, 181 AD3d 1193, 1193 [4th Dept 2020]), we perceive no basis in the record to exercise our power to modify the period of PRS as a matter of discretion in the interest of justice (see CPL 470.15 [6] [b]).

Entered: July 16, 2021

Mark W. Bennett  
Clerk of the Court