

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

852

KA 15-02075

PRESENT: PERADOTTO, J.P., LINDLEY, NEMOYER, CURRAN, AND TROUTMAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KENNETH L. SOUTHARD, DEFENDANT-APPELLANT.

CARA A. WALDMAN, FAIRPORT, FOR DEFENDANT-APPELLANT.

Appeal from a judgment of the Steuben County Court (Peter C. Bradstreet, J.), rendered November 24, 2014. The judgment convicted defendant, upon his plea of guilty, of attempted burglary in the first degree.

It is hereby ORDERED that the judgment so appealed from is unanimously modified on the law by reducing the period of postrelease supervision to a period of 5 years and as modified the judgment is affirmed.

Memorandum: Defendant appeals from a judgment convicting him, upon his plea of guilty, of attempted burglary in the first degree (Penal Law §§ 110.00, 140.30 [2]). Defendant was sentenced, as a second felony offender, to a determinate term of 5 years' imprisonment and 10 years' postrelease supervision (PRS). As defendant correctly contends, the 10-year period of PRS is illegal. The only legal period of PRS under these circumstances is 5 years (see § 70.45 [2]). Although this issue was not raised before the sentencing court, we cannot allow an illegal sentence to stand (see *People v Adams*, 126 AD3d 1405, 1406 [4th Dept 2015], *lv denied* 25 NY3d 1158 [2015]). We therefore modify the judgment by reducing the period of PRS from 10 years to 5 years (see generally *People v Hughes*, 112 AD3d 1380, 1381 [4th Dept 2013], *lv denied* 23 NY3d 1038 [2014]).

We note that the uniform sentence and commitment sheet incorrectly states that the underlying offense was committed on August 23, 2013, and it must be amended to state the correct offense date of August 28, 2013. Additionally, the certificate of conviction does not reflect defendant's status as a second felony offender, and it must be amended accordingly (see generally *People v Johnson*, 161 AD3d 1529, 1529 [4th Dept 2018]).

Entered: July 6, 2018

Mark W. Bennett
Clerk of the Court