

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

78

KA 19-00970

PRESENT: SMITH, J.P., LINDLEY, NEMOYER, CURRAN, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DURELL MURRAY, DEFENDANT-APPELLANT.

DAVISON LAW OFFICE, PLLC, CANANDAIGUA (MARK C. DAVISON OF COUNSEL),
FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (LISA GRAY OF COUNSEL),
FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Victoria M. Argento, J.), rendered November 29, 2018. The judgment convicted defendant upon a jury verdict of kidnapping in the second degree, burglary in the second degree (two counts) and endangering the welfare of a child.

It is hereby ORDERED that the judgment so appealed from is unanimously modified as a matter of discretion in the interest of justice by reducing the sentence of imprisonment imposed for kidnapping in the second degree under count one of the indictment to a determinate term of 15 years and as modified the judgment is affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of, inter alia, one count of kidnapping in the second degree (Penal Law § 135.20) and two counts of burglary in the second degree (§ 140.25 [1] [d]; [2]). Contrary to defendant's contention, his conviction of those crimes is supported by legally sufficient evidence (*see People v Dodt*, 61 NY2d 408, 411 [1984]; *People v Govan*, 268 AD2d 689, 690 [3d Dept 2000], *lv denied* 94 NY2d 920 [2000]; *see generally People v Danielson*, 9 NY3d 342, 349 [2007]). Moreover, viewing the evidence in light of the elements of kidnapping in the second degree and burglary in the second degree as charged to the jury (*see Danielson*, 9 NY3d at 349), we conclude that the verdict convicting defendant of those crimes is not against the weight of the evidence (*see People v Harriott*, 128 AD3d 470, 470 [1st Dept 2015], *lv denied* 26 NY3d 1008 [2015]; *People v Balcom*, 171 AD2d 1028, 1028-1029 [4th Dept 1991], *lv denied* 78 NY2d 920 [1991]; *see also People v Goldsmith*, 127 AD2d 293, 295-296 [3d Dept 1987], *lv denied* 70 NY2d 711 [1987]). Contrary to defendant's contention, the jury's decision to acquit him of kidnapping in the second degree in relation to the victim's son "does not provide [us] with the power to overturn [the jury's] verdict" convicting defendant of kidnapping in the second

degree in relation to the victim herself (*People v Nichols*, 163 AD3d 39, 45 [4th Dept 2018] [internal quotation marks and emphasis omitted]; see *People v Rayam*, 94 NY2d 557, 561-563 [2000]).

We agree with defendant, however, that the sentence is unduly harsh and severe under the circumstances of this case. Thus, we modify the judgment as a matter of discretion in the interest of justice by reducing the sentence on count one of the indictment to a determinate term of 15 years' imprisonment, to be followed by the five years' postrelease supervision imposed by County Court (see generally CPL 470.15 [6] [b]). Defendant's remaining contentions do not warrant reversal or further modification of the judgment.

Entered: March 18, 2022

Ann Dillon Flynn
Clerk of the Court