

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

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**KA 05-00820**

PRESENT: MARTOCHE, J.P., FAHEY, GREEN, AND PINE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAMES E. COMFORT, DEFENDANT-APPELLANT.  
(APPEAL NO. 2.)

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FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (SHIRLEY K. DUFFY OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (MATTHEW H. JAMES OF COUNSEL), FOR RESPONDENT.

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Appeal, by permission of a Justice of the Appellate Division of the Supreme Court in the Fourth Judicial Department, from an order of the Onondaga County Court (William D. Walsh, J.), entered March 10, 2005. The order denied the motion of defendant pursuant to CPL 440.10 to vacate the judgment convicting him of, inter alia, rape in the first degree.

It is hereby ORDERED that said appeal from the order insofar as it concerned those parts of the judgment convicting defendant of sexual abuse in the third degree under counts 6 and 9 of the indictment is unanimously dismissed and the order is otherwise affirmed.

Same Memorandum as in *People v Comfort* ([appeal No. 1] \_\_\_\_ AD3d \_\_\_\_ [Mar. 20, 2009]).

Entered: March 20, 2009

JoAnn M. Wahl  
Clerk of the Court