

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

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KA 06-03438

PRESENT: SMITH, J.P., CENTRA, FAHEY, GREEN, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JUAN CARLOS LUCIANO, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (PHILIP ROTHSCHILD OF COUNSEL), FOR DEFENDANT-APPELLANT.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (MONICA WAGNER OF COUNSEL), FOR RESPONDENT.

Appeal from a new sentence of the Onondaga County Court (William D. Walsh, J.), rendered October 11, 2006 imposed upon defendant's conviction of criminal possession of a controlled substance in the second degree. Defendant was resentenced pursuant to the 2005 Drug Law Reform Act upon his 2006 conviction.

It is hereby ORDERED that the sentence so appealed from is unanimously reversed on the law and the matter is remitted to Onondaga County Court for further proceedings in accordance with the following Memorandum: Defendant appeals from a new sentence upon his 2006 conviction of criminal possession of a controlled substance in the second degree (Penal Law § 220.18 [1]) imposed pursuant to the 2005 Drug Law Reform Act ([DLRA-2] L 2005, ch 643, § 1). We conclude that County Court erred in failing to set forth written findings of fact and the reasons for its determination to impose a determinate term of imprisonment of six years and a five-year period of postrelease supervision (see *People v Peterson*, 50 AD3d 1588, 1589). We therefore reverse the sentence and remit the matter to County Court to determine defendant's application in compliance with DLRA-2.

In view of our determination, we do not address defendant's remaining contentions.

Entered: March 20, 2009

JoAnn M. Wahl
Clerk of the Court