

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

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KA 08-00142

PRESENT: MARTOCHE, J.P., CENTRA, PERADOTTO, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TODD A. KENDALL, DEFENDANT-APPELLANT.

GARY A. HORTON, PUBLIC DEFENDER, BATAVIA (BRIDGET L. FIELD OF COUNSEL), FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (WILLIAM G. ZICKL OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Genesee County Court (Robert C. Noonan, J.), rendered November 1, 2007. The judgment revoked defendant's sentence of probation and imposed a sentence of imprisonment.

It is hereby ORDERED that the judgment so appealed from is unanimously modified on the law by amending the order of protection and as modified the judgment is affirmed, and the matter is remitted to Genesee County Court for further proceedings in accordance with the following Memorandum: Defendant appeals from a judgment revoking the sentence of probation imposed upon his conviction of sexual abuse in the first degree (Penal Law § 130.65 [3]) and sentencing him to a determinate term of imprisonment of four years. County Court also issued a final order of protection with an expiration date of November 4, 2016. We agree with defendant that "the duration of the order of protection is invalid inasmuch as the expiration date of the order does not comply with the provisions of CPL [530.12 (5)] in effect at the time the judgment" convicting defendant of sexual abuse in the first degree was rendered (*People v Goins*, 45 AD3d 1371, 1372). We therefore modify the judgment by amending the order of protection, and we remit the matter to County Court to specify in the order of protection an expiration date in accordance with CPL 530.12 (former [5]), the version of the statute in effect on May 31, 2006, the date on which the judgment convicting defendant of sexual abuse in the first degree was rendered. Finally, the sentence is not unduly harsh or severe.

Entered: August 28, 2009

Patricia L. Morgan
Clerk of the Court