

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

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KA 09-00405

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, PINE, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TRAVIS L. PETERKIN, DEFENDANT-APPELLANT.

WILLIAM G. PIXLEY, ROCHESTER, FOR DEFENDANT-APPELLANT.

CINDY F. INTSCHERT, DISTRICT ATTORNEY, WATERTOWN, FOR RESPONDENT.

Appeal from a resentencing of the Jefferson County Court (Kim H. Martusewicz, J.), rendered January 23, 2009. Defendant was resented upon his conviction of, inter alia, burglary in the second degree (two counts).

It is hereby ORDERED that the resentencing so appealed from is unanimously reversed on the law, the original sentence is reinstated and the matter is remitted to Jefferson County Court for proceedings pursuant to CPL 470.45.

Memorandum: On a prior appeal (*People v Peterkin*, 12 AD3d 1026, lv denied 4 NY3d 766), we affirmed the judgment convicting defendant following a jury trial of, inter alia, two counts of burglary in the second degree (Penal Law § 140.25 [2]). Defendant now appeals from the resentencing imposed on that conviction, contending that County Court erred in resentencing him to a period of postrelease supervision after he had been conditionally released from the previously imposed determinate sentence of incarceration. We note, however, that defendant subsequently was returned to the custody of the Department of Correctional Services based on a violation of the terms of his release. For the same reason as that set forth in our decision in *People v Appleby* (___ AD3d ___ [Mar. 19, 2010]), we agree with defendant that reversal is required (see *People v Williams*, ___ NY3d ___ [Feb. 23, 2010]). In view of our determination, there is no need to address defendant's remaining contention.

Entered: March 19, 2010

Patricia L. Morgan
Clerk of the Court