

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

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KA 09-00583

PRESENT: SMITH, J.P., FAHEY, CARNI, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

SHAWN REES, DEFENDANT-APPELLANT.

JAMES L. DOWSEY, III, WEST VALLEY, FOR DEFENDANT-APPELLANT.

LORI PETTIT RIEMAN, DISTRICT ATTORNEY, LITTLE VALLEY (KELLY M. BALCOM OF COUNSEL), FOR RESPONDENT.

Appeal from a resentencing of the Cattaraugus County Court (Larry M. Himelein, J.), rendered March 2, 2009. Defendant was resentenced upon his conviction of sexual abuse in the first degree.

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 Cattaraugus County Court for proceedings pursuant to CPL 470.45.

Memorandum: County Court erred in resentencing defendant to a period of postrelease supervision after defendant had been conditionally released from the previously imposed determinate sentence of incarceration and the maximum expiration date of that sentence had passed (*see People v Williams*, 14 NY3d 198, 217-220; *People v Peterkin*, 71 AD3d 1402). We therefore conclude that reversal is required.

Entered: June 11, 2010

Patricia L. Morgan
Clerk of the Court