

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

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KA 10-01174

PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND GREEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JERMAINE HARRISON, DEFENDANT-APPELLANT.

SCOTT P. FALVEY, CANANDAIGUA, FOR DEFENDANT-APPELLANT.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA (JEFFREY L. TAYLOR OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Ontario County Court (William F. Kocher, J.), rendered May 13, 2009. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a controlled substance in the third degree and criminal sale of a controlled substance in the third degree.

It is hereby ORDERED that the judgment so appealed from is unanimously modified on the law by reducing the period of postrelease supervision imposed on each count to a period of two years and as modified the judgment is affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of criminal possession of a controlled substance in the third degree (Penal Law § 220.16 [1]) and criminal sale of a controlled substance in the third degree (§ 220.39 [1]). As the People correctly concede, County Court erred in imposing three-year periods of postrelease supervision for those counts, which are class B drug felonies (see § 70.45 [2] [b]; § 70.70 [2] [a]). We therefore modify the judgment by reducing the period of postrelease supervision imposed on each count to a period of two years (see e.g. *People v Norman*, 66 AD3d 1473, 1474, lv denied 13 NY3d 940), the maximum period allowed. The sentence as modified is not unduly harsh or severe.

Entered: April 29, 2011

Patricia L. Morgan
Clerk of the Court