

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

1220

KA 08-00549

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL DUGGER, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (MARY P. DAVISON OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (SUSAN C. AZZARELLI OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Onondaga County Court (William D. Walsh, J.), rendered January 2, 2008. 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 affirmed.

Memorandum: Defendant appeals from a judgment revoking the sentence of probation previously imposed upon his conviction of attempted arson in the third degree (Penal Law §§ 110.00, 150.10 [1]) and imposing a sentence of imprisonment based upon his admission that he violated the terms and conditions of his probation. Because the sentence of imprisonment for the violation of probation was imposed more than 30 days after the original sentence and defendant had not previously filed a notice of appeal from the original judgment of conviction, defendant may appeal only from the sentence of imprisonment (see CPL 450.30 [3]; *People v Johnson*, 77 AD3d 1441; see also *People v Coble*, 17 AD3d 1165, lv denied 5 NY3d 787). Thus, the contentions of defendant with respect to the original judgment of conviction, i.e., that County Court erred in delegating the calculation of restitution to the Probation Department and in denying him due process by refusing to conduct a restitution hearing, are not properly before us. The sentence of imprisonment is not unduly harsh or severe.

Entered: November 18, 2011

Patricia L. Morgan
Clerk of the Court