

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

1262

KA 10-00053

PRESENT: SCUDDER, P.J., SMITH, GREEN, GORSKI, AND MARTOCHE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAMES PERRY, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JAMES ECKERT OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (KELLY CHRISTINE WOLFORD OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Francis A. Affronti, J.), rendered November 17, 2009. The judgment convicted defendant, upon a jury verdict, of petit larceny and criminal contempt in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed and the matter is remitted to Supreme Court, Monroe County, for proceedings pursuant to CPL 460.50 (5).

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of petit larceny (Penal Law § 155.25) and criminal contempt in the second degree (§ 215.50 [3]), as lesser included offenses of the two crimes charged in the indictment. Contrary to defendant's contention, the imposition of concurrent sentences was not required pursuant to Penal Law § 70.25 (2). Although the underlying acts of theft and criminal contempt "took place over a continuous course of activity, they constituted separate and distinct acts, and [neither] of the completed offenses was a material element of [the other]" (*People v Boyce*, 133 AD2d 164; see *People v Bailey*, 17 AD3d 1022, 1v denied 5 NY3d 803; see generally *People v Laureano*, 87 NY2d 640, 643).

Entered: December 23, 2011

Frances E. Cafarell
Clerk of the Court