

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

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KA 10-02199

PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, CARNI, AND MARTOCHE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DIANA M. FLINN, DEFENDANT-APPELLANT.
(APPEAL NO. 1.)

DAVID J. FARRUGIA, PUBLIC DEFENDER, LOCKPORT (JOSEPH G. FRAZIER OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. VIOLANTE, DISTRICT ATTORNEY, LOCKPORT (THOMAS H. BRANDT OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Niagara County Court (Sara S. Sperrazza, J.), rendered July 2, 2010. 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: In appeal No. 1, defendant appeals from a judgment revoking the sentence of probation previously imposed upon her conviction of felony driving while intoxicated (Vehicle and Traffic Law § 1192 [3]; § 1193 [1] [c] [former (i)]) and imposing a sentence of one year in jail based on her violation of the terms and conditions of her probation. In appeal No. 2, defendant appeals from a judgment revoking the sentence of probation previously imposed upon her conviction of assault in the second degree (Penal Law § 120.05 [1]) and imposing a sentence of imprisonment based on her violation of the terms and conditions of her probation.

We reject the contention of defendant in each appeal that the People failed to establish by a preponderance of the evidence that defendant violated the terms and conditions of her probation (see CPL 410.70 [1], [3]; *People v Donohue*, 64 AD3d 1187; *People v Bergman*, 56 AD3d 1225, *lv denied* 12 NY3d 756). The People established that defendant operated a motor vehicle without the written permission of County Court and that she consumed alcoholic beverages before doing so in violation of the terms and conditions of her probation. Contrary to defendant's further contention in appeal No. 2, the sentence is not unduly harsh or severe.

Entered: February 10, 2012

Frances E. Cafarell
Clerk of the Court