

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

1258

**KA 11-01646**

PRESENT: SMITH, J.P., CARNI, LINDLEY, SCONIERS, AND WHALEN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

WILLIE T.J., DEFENDANT-APPELLANT.

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THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (BARBARA J. DAVIES OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (MATTHEW B. POWERS OF COUNSEL), FOR RESPONDENT.

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Appeal from an adjudication of the Erie County Court (Sheila A. DiTullio, J.), rendered June 20, 2011. The adjudication revoked defendant's sentence of probation and imposed a sentence of imprisonment.

It is hereby ORDERED that the adjudication so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from an adjudication revoking the term of probation previously imposed upon his conviction of robbery in the second degree (Penal Law § 160.10 [1]) and sentencing him to a term of imprisonment. Defendant contends that County Court erred in resentencing him in the absence of an updated presentence report. Defendant waived that contention, however, inasmuch as he explicitly waived the preparation of an updated report (*see People v Servey*, 96 AD3d 1428, 1428-1429, *lv denied* 19 NY3d 1001; *People v Motzer*, 96 AD3d 1635, 1636).

Entered: December 21, 2012

Frances E. Cafarell  
Clerk of the Court