

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

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KA 14-00503

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, SCONIERS, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL ORTH, DEFENDANT-APPELLANT.

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

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (ASHLEY R. SMALL OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (M. William Boller, A.J.), rendered February 7, 2014. The judgment convicted defendant, upon his plea of guilty, of petit larceny, resisting arrest and driving while intoxicated, a misdemeanor.

It is hereby ORDERED that the judgment so appealed from is unanimously modified on the law by directing that the terms of imprisonment shall run concurrently, and as modified the judgment is affirmed, and the matter is remitted to Supreme Court, Erie County, for proceedings pursuant to CPL 460.50 (5).

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of petit larceny (Penal Law § 155.25), resisting arrest (§ 205.30), and driving while intoxicated (Vehicle and Traffic Law § 1192 [3]). We agree with defendant that his sentence is illegal to the extent that Supreme Court imposed consecutive definite sentences of one year each for the offenses of petit larceny and resisting arrest. "Because those offenses were committed as part of a single incident, imposition of consecutive sentences aggregating more than one year is illegal" (*People v Beckwith*, 270 AD2d 798, 798; see Penal Law § 70.25 [3]). We therefore modify the judgment by directing that those sentences run concurrently.

Entered: February 13, 2015

Frances E. Cafarell
Clerk of the Court