

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

1389

KA 14-01524

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, WHALEN, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

HEATH M. CUMMINGS, DEFENDANT-APPELLANT.

WILLIAM J. GABLER, OLEAN, FOR DEFENDANT-APPELLANT.

BROOKS T. BAKER, DISTRICT ATTORNEY, BATH (JOHN C. TUNNEY OF COUNSEL),
FOR RESPONDENT.

Appeal from a judgment of the Steuben County Court (Joseph W. Latham, J.) rendered June 12, 2013. 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 imposed upon his conviction of sexual abuse in the first degree (Penal Law § 130.65 [3]) and sentencing him to a term of incarceration. Contrary to defendant's contention, the violation of probation was not de minimis nor a mere technicality. Defendant was sentenced to probation for an offense involving sexual contact with a young boy, and one of the conditions of probation was that defendant was prohibited from having any contact or association with children under the age of 18. The evidence at the revocation hearing established that defendant was developing a relationship with a man who is the father of two boys, that defendant rode in a vehicle with those boys, that he gave a false name to the boys' parents, and that he began to ingratiate himself with the boys by letting them play with his dogs.

Furthermore, given the nature of his prior offense and the violation, we conclude that the term of incarceration, which is approximately one half of the maximum sentence, is not unduly harsh or severe. We have considered defendant's remaining contention and conclude that it is without merit.

Entered: December 31, 2015

Frances E. Cafarell
Clerk of the Court