

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: December 29, 2005

97642

In the Matter of CHENANGO
COUNTY DEPARTMENT OF
PROBATION,

Respondent,

v

MEMORANDUM AND ORDER

SHANE MUNDY,

Appellant.

Calendar Date: November 17, 2005

Before: Mercure, J.P., Peters, Mugglin, Rose and Kane, JJ.

Kara M. O'Connor, New York City, for appellant.

Richard W. Breslin, District Attorney, Norwich (Frank B. Revoir of counsel), for respondent.

Kane, J.

Appeal from an order of the Family Court of Chenango County (Campbell, J.), entered November 19, 2004, which granted petitioner's application, in a proceeding pursuant to Family Ct Act article 4, to find respondent in violation of the terms of his probation and sentenced him to a six-month jail term.

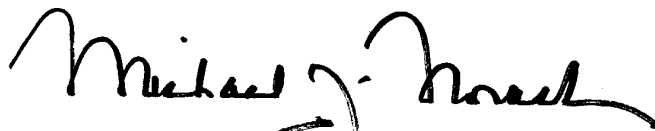
Family Court issued an order placing respondent on probation after finding that he willfully violated an order of support. In a companion case appealing that order, we are withholding decision and remitting the matter for a determination on respondent's motion to dismiss for lack of personal jurisdiction (Matter of Sutton v Mundy, ___ AD3d ___ [decided herewith]). If the court lacked jurisdiction to enter the

original support violation order, the order is not merely erroneous but void and respondent cannot be punished for failing to comply with that order (see Matter of Bickwid v Deutsch, 229 AD2d 533, 534-535 [1996], lv denied 89 NY2d 802 [1996]; Matter of Village of St. Johnsville v Triumpho, 220 AD2d 847, 848 [1995], lv denied 87 NY2d 809 [1996]; see also People v Malone, 3 AD3d 795, 797 [2004], lv denied 2 NY3d 763 [2004]). Therefore, we must withhold this case until Family Court renders a determination in the companion case.

Mercure, J.P., Peters, Mugglin and Rose, JJ., concur.

ORDERED that the decision is withheld pending the determination of the Family Court of Chenango County in Matter of Sutton v Mundy (___ AD3d ___ [decided herewith]).

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is written in a cursive style with a large, looping initial "M".

Michael J. Novack
Clerk of the Court