

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D13055  
Y/hu

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - October 30, 2006

FRED T. SANTUCCI, J.P.  
GLORIA GOLDSTEIN  
PETER B. SKELOS  
ROBERT A. LIFSON, JJ.

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2004-09854

DECISION & ORDER

The People, etc., respondent,  
v Milton Palaguachi, appellant.

(Ind. No. 1913/03)

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Lynn W. L. Fahey, New York, N.Y. (Lisa Napoli of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Ellen C. Abbot, and Marie Christine Amy of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Cooperman, J.), rendered October 22, 2004, convicting him of assault in the second degree, criminal possession of a weapon in the fourth degree, and menacing in the second degree, upon a jury verdict, and imposing sentence. Upon the appeal from the judgment, the duration of the orders of protection issued at the time of sentencing will be reviewed as a matter of discretion in the interest of justice (*see* CPL 470.15[6][a]).

ORDERED that on the appeal from the judgment, so much of the orders of protection as directed that they remain in effect until October 22, 2011, are vacated, on the law and as a matter of discretion in the interest of justice, and the matter is remitted to the Supreme Court, Queens County, for a new determination of the durations of the orders of protection, taking into account the defendant's jail-time credit; and it is further,

ORDERED that the judgment is affirmed.

As the People correctly concede, the Supreme Court should have taken into account the defendant's jail-time credit (*see People v Nieves*, 2 NY3d 310, 311) in determining the durations

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of the orders of protection (*see People v Ortiz*, 25 AD3d 811). Accordingly, we remit the matter to the Supreme Court, Queens County, for a new determination of the durations of the order of protection, taking into account the defendant's jail-time credit.

The defendant's remaining contention is unpreserved for appellate review and, in any event, is without merit (*see People v Harper*, 32 AD3d 16, *affd* \_\_\_\_\_NY3d\_\_\_\_\_; *People v Payton*, 31 AD3d 580, *lv denied* 7 NY3d 850).

SANTUCCI, J.P., GOLDSTEIN, SKELOS and LIFSON, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court