

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

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KA 07-01380

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, LINDLEY, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DERICK LETMAN, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (DAVID M. ABBATOY, JR., OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (NICOLE M. FANTIGROSSI OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (John J. Ark, J.), rendered May 17, 2007. The judgment convicted defendant, upon his plea of guilty, of assault in the second degree (two counts).

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

Memorandum: Defendant appeals from a judgment convicting him upon his guilty plea of two counts of assault in the second degree (Penal Law § 120.05 [2]). In addition to sentencing defendant to a term of incarceration, Supreme Court issued an order of protection for the victims. Defendant failed to preserve for our review his contention that the court failed to take into account jail time credit to which he is entitled in determining the duration of the order of protection (*see People v Nieves*, 2 NY3d 310, 315-317), and we decline to exercise our power to review that contention as a matter of discretion in the interest of justice (*see CPL 470.15 [6] [a]; People v Owens*, 66 AD3d 1428, *lv denied* 14 NY3d 772).

Entered: June 11, 2010

Patricia L. Morgan
Clerk of the Court