

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

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_____AD3d_____

Submitted - January 26, 2018

ALAN D. SCHEINKMAN, P.J.
JOHN M. LEVENTHAL
BETSY BARROS
FRANCESCA E. CONNOLLY
ANGELA G. IANNACCI, JJ.

2017-01275

DECISION & ORDER

The People, etc., respondent,
v Bruce Appiarius, appellant.

(Ind. No. 171/16)

Paul Skip Laisure, New York, NY (Cynthia Colt of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, NY (John M. Castellano, Johnnette Traill, and Christopher Blira-Koessler of counsel; Lorrie A. Zinno on the memorandum), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Ronald Hollie, J.), dated December 12, 2016, convicting him of assault in the third degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention concerning an order of protection issued at the time of sentencing would survive his waiver of the right to appeal, even if the waiver is valid (*see People v Gibson-Parish*, 153 AD3d 1273; *People v Cedeno*, 107 AD3d 734). However, the defendant failed to preserve for appellate review his challenge to the order of protection (*see People v Nieves*, 2 NY3d 310; *People v Gibson-Parish*, 153 AD3d 1273; *People v Cedeno*, 107 AD3d 734), and we decline to reach the issue in the exercise of our interest of justice jurisdiction. "[T]he better practice—and best use of judicial resources—is for a defendant seeking adjustment of [final orders of protection]

April 18, 2018


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to request relief from the issuing court in the first instance, resorting to the appellate courts only if necessary” (*People v Nieves*, 2 NY3d at 317).

SCHEINKMAN, P.J., LEVENTHAL, BARROS, CONNOLLY and IANNACCI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court