

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

400

KA 18-01560

PRESENT: BANNISTER, J.P., MONTOUR, SMITH, NOWAK, AND HANNAH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MARCUS L. DANIELS, DEFENDANT-APPELLANT.

JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (AARON FRIEDMAN OF COUNSEL),
FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (AMY N. WALENDZIAK OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Charles A. Schiano, Jr., J.), rendered February 26, 2018. The judgment convicted defendant upon a jury verdict of criminal possession of a weapon in the second degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]). Defendant's contention that Penal Law § 265.03 is unconstitutional in light of the United States Supreme Court's decision in *New York State Rifle & Pistol Assn., Inc. v Bruen* (597 US 1 [2022]) is unpreserved for our review inasmuch as he failed to raise his constitutional challenge during the proceedings in Supreme Court (*see People v Bauza*, 224 AD3d 1219, 1220 [4th Dept 2024], *lv denied* 42 NY3d 925 [2024]; *People v Maddox*, 218 AD3d 1154, 1154-1155 [4th Dept 2023], *lv denied* 40 NY3d 1081 [2023]). Defendant's attempt to circumvent the preservation doctrine by framing his argument as a constitutional challenge to his conviction rather than the statute is unpersuasive (*see generally People v Brooks*, 196 AD3d 914, 915 [3d Dept 2021]). Similarly, defendant's contention that the sentencing procedure pursuant to which he was adjudicated a persistent violent felony offender is unconstitutional in light of the United States Supreme Court's decision in *Erlinger v United States* (602 US 821 [2024]) is unpreserved for our review (*see People v Hernandez*, – NY3d –, 2025 NY Slip Op 00904, *3 [2025]; *see generally People v Cabrera*, 41 NY3d 35, 42-46 [2023]). We decline to exercise our power to review defendant's contentions as a matter of discretion in the interest of justice (*see CPL 470.15 [6] [a]*).

Defendant's contention that the sentence constitutes cruel and

unusual punishment is also unpreserved for appellate review, and we decline to exercise our power to review it as a matter of discretion in the interest of justice (see *People v Pena*, 28 NY3d 727, 730 [2017]; see generally *People v Murray*, 232 AD3d 1291, 1291-1292 [4th Dept 2024], lv denied 43 NY3d 931 [2025]). We have considered defendant's remaining contentions on appeal and conclude that they do not warrant reversal or modification of the judgment.

Entered: June 27, 2025

Ann Dillon Flynn
Clerk of the Court