

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

1084

KA 17-01091

PRESENT: PERADOTTO, J.P., CARNI, LINDLEY, CURRAN, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DANIEL RODRIGUEZ-RICARDO, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JANET C. SOMES OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (KAYLAN PORTER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Francis A. Affronti, J.), rendered March 21, 2017. The judgment convicted defendant upon a plea of guilty of criminal contempt in the first degree.

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

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of criminal contempt in the first degree (Penal Law § 215.51 [b] [v]), defendant contends that Supreme Court erred in issuing a no-contact order of protection on behalf of the victim, who indicated at sentencing that she wanted only a no-offensive-contact order of protection. We reject that contention. The sentencing court had authority "to issue an order of protection, and set the terms thereof, even in the absence of the victim's consent" (*People v Richardson*, 134 AD3d 1566, 1567 [4th Dept 2015], *lv denied* 27 NY3d 1074 [2016] [internal quotation marks omitted]; *see People v Lilley*, 81 AD3d 1448, 1448 [4th Dept 2011], *lv denied* 17 NY3d 860 [2011]). Under the circumstances of this case, including the nature of the underlying crime, the court did not err in issuing the no-contact order of protection (*see People v Walker*, 151 AD3d 1730, 1731 [4th Dept 2017], *lv denied* 29 NY3d 1135 [2017], *reconsideration denied* 30 NY3d 984 [2017]).

Defendant further contends that the court erred in setting the expiration date of the order of protection by failing to take into account the time he served in jail prior to sentencing. As defendant correctly concedes, his contention is unpreserved for our review inasmuch as he did not object to the duration of the order of protection at sentencing (*see People v Hoyt*, 107 AD3d 1426, 1426 [4th Dept 2013], *lv denied* 21 NY3d 1042 [2013]), and we decline to exercise

our power to review the contention as a matter of discretion in the interest of justice (see CPL 470.15 [3] [c]).

Entered: December 23, 2021

Ann Dillon Flynn
Clerk of the Court