

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

People v. Rodriguez-Ricardo

2021 N.Y. Slip Op. 07448 (App. Div. 2021) · No. KA 17-01091 · Decided December 23, 2021

SUMMARY

The New York Appellate Division, Fourth Department, affirmed a judgment convicting the defendant upon a guilty plea of criminal contempt in the first degree. The court held that the sentencing court had authority to issue a no-contact order of protection despite the victim's preference for a no-offensive-contact order, and declined to review the unpreserved challenge to the order's expiration date.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Peradotto, J.P.; Carni, J.; Lindley, J.; Curran, J.; Bannister, J.
JURISDICTION	New York
DECIDED	December 23, 2021
DOCKET	KA 17-01091
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Supreme Court, Monroe County, entered after his guilty plea to criminal contempt in the first degree, challenging the terms and duration of an order of protection.
STANDARD OF REVIEW	The unpreserved challenge to the duration of the order of protection was not reviewed as of right; the court declined discretionary interest-of-justice review under CPL 470.15 (3) (c). The challenge to the order's terms was reviewed for legal error.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Daniel Rodriguez-Ricardo v. The People of the State of New York

TOPICS

- criminal procedure
- preservation of error
- appellate procedure
- sentencing
- remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the sentencing court had authority to issue a no-contact order of protection despite the victim's stated preference for only a no-offensive-contact order.
2. Whether the court improperly set the expiration date of the order of protection by failing to account for defendant's pre-sentence incarceration.
3. Whether the Appellate Division should exercise discretionary interest-of-justice review of the unpreserved challenge to the duration of the order of protection.

HOLDINGS

1. A sentencing court may issue an order of protection and set its terms even without the victim's consent; under the circumstances, including the nature of the underlying crime, the court did not err by issuing a no-contact order of protection.
2. Defendant's challenge to the expiration date of the order of protection was unpreserved because he did not object to its duration at sentencing, and the court declined to review the issue in the interest of justice.

KEY QUOTATIONS

“to issue an order of protection, and set the terms thereof, even in the absence of the victim's consent” ([*1])

FACTUAL BACKGROUND

Defendant pleaded guilty to criminal contempt in the first degree under Penal Law § 215.51 (b) (v). At sentencing, the victim requested only a no-offensive-contact order of protection, but the sentencing court issued a no-contact order. Defendant also claimed that the expiration date of the order failed to account for time he had spent in jail before sentencing.

PROCEDURAL HISTORY

The Supreme Court, Monroe County, convicted defendant upon his plea of guilty to criminal contempt in the first degree and issued a no-contact order of protection for the victim at sentencing. Defendant appealed, arguing that the court lacked authority to issue the no-contact order without the victim's consent and that the court improperly calculated its expiration date by failing to credit pre-sentence jail time. The Appellate Division unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Richardson, 134 A.D.3d 1566, 1567 (4th Dep't 2015), leave to appeal denied, 27 N.Y.3d 1074 (2016)
- People v. Lilley, 81 A.D.3d 1448, 1448 (4th Dep't 2011), leave to appeal denied, 17 N.Y.3d 860 (2011)
- People v. Walker, 151 A.D.3d 1730, 1731 (4th Dep't 2017), leave to appeal denied, 29 N.Y.3d 1135 (2017), reconsideration denied, 30 N.Y.3d 984 (2017)
- People v. Hoyt, 107 A.D.3d 1426, 1426 (4th Dep't 2013), leave to appeal denied, 21 N.Y.3d 1042 (2013)

OPINION

PER CURIAM.

People v Rodriguez-Ricardo (2021 NY Slip Op 07448) People v Rodriguez-ricardo 2021 NY Slip Op 07448 Decided on December 23, 2021 Appellate Division, Fourth Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on December 23, 2021 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department PRESENT: PERADOTTO, J.P., CARNI, LINDLEY, CURRAN, AND BANNISTER, JJ. 1084 KA 17-01091 [*1]THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, vDANIEL 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