

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

6

KA 07-00846

PRESENT: SCUDDER, P.J., HURLBUTT, CENTRA, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CARLA OUCHIE, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (NICHOLAS T. TEXIDO OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK J. CLARK, DISTRICT ATTORNEY, BUFFALO (MATTHEW B. POWERS OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (Deborah A. Haendiges, J.), rendered December 12, 2006. The judgment convicted defendant, upon her plea of guilty, of criminal contempt in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously modified as a matter of discretion in the interest of justice and on the law by providing that the order of protection shall expire on August 9, 2009 and as modified the judgment is affirmed.

Memorandum: On appeal from a judgment convicting her upon her plea of guilty of criminal contempt in the second degree (Penal Law § 215.50 [3]), defendant contends that Supreme Court erred in directing that the order of protection remain in effect until three years from the date of sentencing. Although that contention survives the waiver by defendant of her right to appeal (*see People v Cambridge*, 55 AD3d 1381; *see also People v Fomby*, 42 AD3d 894, 896), she failed to preserve it for our review (*see People v Nieves*, 2 NY3d 310, 315-317). We nevertheless exercise our power to review defendant's contention as a matter of discretion in the interest of justice (*see People v Chattley*, 49 AD3d 1307, *lv denied* 10 NY3d 933; *People v Goins*, 45 AD3d 1371), and we modify the judgment by providing that the order of protection shall expire on August 9, 2009, three years from the date of defendant's conviction (*see Cambridge*, 55 AD3d 1381; *Chattley*, 49 AD3d 1307).

Entered: February 6, 2009

JoAnn M. Wahl
Clerk of the Court