

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

90

**KA 09-00164**

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, PINE, AND GORSKI, JJ.

---

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

NICOLE J. RADUNS, DEFENDANT-APPELLANT.

---

SHIRLEY A. GORMAN, BROCKPORT, FOR DEFENDANT-APPELLANT.

JOSEPH V. CARDONE, DISTRICT ATTORNEY, ALBION (KATHERINE BOGAN OF COUNSEL), FOR RESPONDENT.

---

Appeal from a judgment of the Orleans County Court (James P. Punch, J.), rendered November 10, 2008. The judgment convicted defendant, upon her plea of guilty, of burglary in the third 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 vacating the order of protection in favor of C.S. and as modified the judgment is affirmed.

Memorandum: Defendant appeals from a judgment convicting her upon her plea of guilty of burglary in the third degree (Penal Law § 140.20). Contrary to the contention of defendant, her valid waiver of the right to appeal encompasses her challenge to the severity of the sentence inasmuch as County Court advised defendant of the maximum sentence it could impose before she waived her right to appeal (see *People v Lococo*, 92 NY2d 825). As defendant correctly contends, however, the court had no authority to issue an order of protection in favor of an individual who was neither a victim of the crime nor a witness to the crime to which defendant pleaded guilty (see CPL 530.13 [4] [a]). Although defendant failed to preserve that contention for our review by failing to object to the order of protection on that ground when it was issued (see *People v Shampine*, 31 AD3d 1163, 1164), we nevertheless exercise our power to review it as a matter of discretion in the interest of justice (see CPL 470.15 [6] [a]). The order of protection issued in favor of that individual thus is invalid (see *People v Creighton*, 298 AD2d 774, 776). We therefore modify the judgment by vacating that order of protection.

Entered: February 11, 2010

Patricia L. Morgan  
Clerk of the Court