

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

1141

KA 08-01980

PRESENT: SCUDDER, P.J., SMITH, CARNI, PINE, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

STEPHEN C. ST. LAURENT, DEFENDANT-APPELLANT.

EASTON THOMPSON KASPEREK SHIFFRIN LLP, ROCHESTER (BRIAN SHIFFRIN OF COUNSEL), FOR DEFENDANT-APPELLANT.

DONALD H. DODD, DISTRICT ATTORNEY, OSWEGO (MICHAEL G. CIANFARANO OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Oswego County Court (James W. McCarthy, J.), rendered August 27, 2007. The judgment convicted defendant, upon his plea of guilty, of sexual abuse in the first degree (two counts).

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 amending the order of protection and as modified the judgment is affirmed, and the matter is remitted to Oswego County Court for further proceedings in accordance with the following Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of two counts of sexual abuse in the first degree (Penal Law § 130.65 [3]). We agree with defendant that County Court erred in setting the expiration date of the order of protection without taking into account the jail-time credit to which he is entitled (see *People v Dixon*, 38 AD3d 1242; *People v Mingo*, 38 AD3d 1270). Although defendant failed to preserve that contention for our review (see *People v Nieves*, 2 NY3d 310, 315-317), we exercise our power to review it as a matter of discretion in the interest of justice (see CPL 470.15 [6] [a]). We therefore modify the judgment by amending the order of protection, and we remit the matter to County Court to determine the jail time credit to which defendant is entitled and to specify in the order of protection an expiration date in accordance with CPL 530.13 (former [4] [ii]), the version of the statute in effect when the judgment was rendered on August 27, 2007. As defendant correctly concedes, however, he failed to preserve for our review his contention that the court failed to state on the record sufficient reasons for issuing the order of protection (see CPL 470.05 [2]), and we decline to exercise our power to address his contention as a matter of discretion in the interest of justice (see CPL 470.15

[6] [a]).

Entered: February 11, 2010

Patricia L. Morgan
Clerk of the Court