

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

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**KA 21-00639**

PRESENT: WHALEN, P.J., LINDLEY, OGDEN, NOWAK, AND DELCONTE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

NAJEE ROUSE, DEFENDANT-APPELLANT.

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JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (JAMES A. HOBBS OF COUNSEL),  
FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (AMY N. WALENDZIAK OF  
COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Monroe County (Thomas E. Moran, J.), rendered April 15, 2021. The judgment convicted defendant upon a guilty plea of attempted criminal possession of a weapon in the second degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of attempted criminal possession of a weapon in the second degree (Penal Law §§ 110.00, 265.03 [3]). Although defendant's challenge to the constitutionality of Penal Law § 265.03 in light of the United States Supreme Court's decision in *New York State Rifle & Pistol Assn., Inc. v Bruen* (597 US 1 [2022]) would survive even a valid waiver of the right to appeal (see *People v Benjamin*, 216 AD3d 1457, 1457 [4th Dept 2023]), defendant failed to raise a constitutional challenge to the statute before Supreme Court and his challenge is therefore not preserved for our review (see CPL 470.05 [2]; *People v Cabrera*, - NY3d -, -, 2023 NY Slip Op 05968, \*2-7 [2023]; *People v David*, - NY3d -, -, 2023 NY Slip Op 05970, \*3-4 [2023]; *Benjamin*, 216 AD3d at 1457). We decline to exercise our power to review it as a matter of discretion in the interest of justice (see CPL 470.15 [3] [c]).

Entered: March 15, 2024

Ann Dillon Flynn  
Clerk of the Court