

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

403

**KA 22-00378**

PRESENT: SMITH, J.P., PERADOTTO, CURRAN, BANNISTER, AND OGDEN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DAMONIE S. BENJAMIN, DEFENDANT-APPELLANT.

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NORMAN P. EFFMAN, PUBLIC DEFENDER, WARSAW (FARES A. RUMI OF COUNSEL),  
FOR DEFENDANT-APPELLANT.

DONALD G. O'GEEN, DISTRICT ATTORNEY, WARSAW (ADAM W. KOCH OF COUNSEL),  
FOR RESPONDENT.

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Appeal from a judgment of the Wyoming County Court (Michael M. Mohun, J.), rendered May 19, 2021. The judgment convicted defendant upon a plea of guilty 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 the record establishes that defendant validly waived his right to appeal (*see generally People v Thomas*, 34 NY3d 545, 565-566 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]), 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* (– US –, 142 S Ct 2111 [2022]) is not barred by the waiver inasmuch as that challenge relates to "a right of constitutional dimension going to 'the very heart of the process' " (*People v Lopez*, 6 NY3d 248, 255 [2006]). Because defendant failed to raise any such challenge in County Court, however, it is not preserved for our review (*see CPL 470.05* [2]; *People v Jacque-Crews*, 213 AD3d 1335, 1335-1336 [4th Dept 2023], *lv denied* 39 NY3d 1111 [2023]; *see generally People v Reese*, 206 AD3d 1461, 1462-1463 [3d Dept 2022]), and 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: May 5, 2023

Ann Dillon Flynn  
Clerk of the Court