

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

People v. Pastel

2026 NY Slip Op 00548 · No. CR-22-2312 · Decided February 5, 2026

SUMMARY

The Appellate Division, Third Department affirmed Anthony Pastel's judgment of conviction for assault in the second degree following his guilty plea and sentence to seven years in prison plus postrelease supervision. The court held that his challenges to the legality and constitutionality of the sentence were unpreserved because he neither objected to the sentence nor moved to withdraw his plea, and declined to reach the claims in the interest of justice.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Powers, J.; Garry, P.J.; Reynolds Fitzgerald, J.; McShan, J.; Mackey, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	February 5, 2026
DOCKET	CR-22-2312
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of the County Court of Greene County convicting him upon his guilty plea of assault in the second degree and sentencing him to seven years in prison followed by two years of postrelease supervision.
STANDARD OF REVIEW	Unpreserved sentencing claims are generally not reviewable; the narrow exception for unpreserved fundamental or readily discernible illegal-sentence errors did not apply. The court separately exercised its discretion to decline corrective action in the interest of justice.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Anthony Pastel v. The People of the State of New York

TOPICS

- criminal procedure
- sentencing
- preservation of error
- appellate procedure
- standard of review

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

QUESTIONS PRESENTED

1. Whether defendant's challenge to the sentence was preserved for appellate review when he did not object to the sentence or move to withdraw his guilty plea.
2. Whether the alleged sentencing errors fell within the narrow exception to the preservation rule for fundamental flaws or an illegal sentence readily discernible from the trial record.
3. Whether the Appellate Division should exercise its interest-of-justice jurisdiction to modify or otherwise correct the sentence.

HOLDINGS

1. A challenge to the sentence based on the court's alleged consideration of improper factors and insufficient consideration of mitigating factors was unpreserved because defendant neither objected to the sentence actually imposed nor moved to withdraw his guilty plea.
2. The alleged sentencing error did not qualify for the narrow exception to the preservation rule because it was not a fundamental flaw and the sentence was not illegal in a manner readily discernible from the trial record.
3. The court declined defendant's request to take corrective action in the interest of justice.

KEY QUOTATIONS

"As defendant neither 'object[ed] to the sentence actually imposed or move[d] to withdraw his guilty plea,' his challenge is unpreserved for appellate review"

"the alleged error does not fall within th[e] narrow exception to the preservation rule [which] is reserved for the most fundamental flaws[, n]or did the court exceed its powers and impose a sentence that is illegal in a respect that is readily discernible from the trial record"

FACTUAL BACKGROUND

Defendant shoved a woman with whom he had a personal relationship against the walls of her residence and repeatedly punched her in the head with a closed fist while she held her 20-month-old child. The victim sustained various injuries, including a skull fracture and a subarachnoid hemorrhage of the brain. Defendant pleaded guilty to assault in the second degree, and County Court sentenced him to seven years' imprisonment followed by two years of postrelease supervision.

PROCEDURAL HISTORY

Defendant was charged by a three-count indictment with attempted murder in the second degree, assault in the second degree, and endangering the welfare of a child. He pleaded guilty to assault in the second degree and waived his right to appeal. County Court imposed the maximum permissible sentence, and defendant appealed, challenging the legality and constitutionality of the sentence and the court's consideration of allegedly improper

and mitigating factors. The Appellate Division held the challenge unpreserved, declined interest-of-justice review, and affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Olds, 36 NY3d 1091, 1092 [2021]
- People v. Jenne, 224 AD3d 953, 958 [3d Dept 2024], lv denied 42 NY3d 927 [2024]
- People v. Coler, 214 AD3d 1207, 1207 [3d Dept 2023], lv denied 40 NY3d 1091 [2024]
- People v. Flowers, 28 NY3d 536, 540 [2016]
- People v. Stephenson, 205 AD3d 1217, 1218-1219 [3d Dept 2022], lv denied 38 NY3d 1153 [2022]

OPINION

PER CURIAM.

People v Pastel (2026 NY Slip Op 00548) People v Pastel 2026 NY Slip Op 00548 Decided on February 5, 2026 Appellate Division, Third Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered:February 5, 2026 CR-22-2312 [*1]The People of the State of New York, Respondent, v Anthony Pastel, Appellant.

Calendar Date:January 6, 2026 Before:Garry, P.J., Reynolds Fitzgerald, McShan, Powers and Mackey, JJ. Bonjean Law Group, PLLC, Brooklyn (Jennifer Bonjean of counsel), for appellant. Joseph Stanzone, District Attorney, Catskill (Danielle D. McIntosh of counsel), for respondent. Powers, J. Appeal from a judgment of the County Court of Greene County (Debra Young, J.), rendered July 8, 2022, convicting defendant upon his plea of guilty of the crime of assault in the second degree.

Defendant was charged in a three-count indictment with attempted murder in the second degree, assault in the second degree and endangering the welfare of a child stemming from allegations that he shoved the victim, with whom he had a personal relationship, against the walls of her residence and repeatedly punched her in the head with a closed fist while she held her 20-month-old child.

This incident resulted in various injuries to the victim, including a skull fracture and subarachnoid hemorrhage of her brain. Defendant pleaded guilty to assault in the second degree and agreed to waive his right to appeal. County Court sentenced defendant to the maximum permissible prison term of seven years, to be followed by two years of postrelease supervision.

Defendant appeals. Defendant contends that the sentence was rendered unlawful and constitutionally defective by County Court's consideration of improper factors — including its consideration of and implicit application of the sentencing range for the attempted murder charge — and insufficient consideration of mitigating factors in imposing the sentence.

As defendant neither "object[ed] to the sentence actually imposed or move[d] to withdraw his guilty plea," his challenge is unpreserved for appellate review (*People v Olds*, 36 NY3d 1091, 1092 [2021]; see CPL 470.05 [2]; *People v Jenne*, 224 AD3d 953, 958 [3d Dept 2024], lv denied 42 NY3d 927 [2024]; *People v Coler*, 214 AD3d 1207, 1207 [3d Dept 2023], lv denied 40 NY3d 1091 [2024]).

Further, "the alleged error does not fall within th[e] narrow exception to the preservation rule [which] is reserved for the most fundamental flaws[, n]or did the court exceed its powers and impose a sentence that is illegal in a respect that is readily discernible from the trial record" (*People v Flowers*, 28 NY3d 536, 540 [2016] [internal quotation marks, brackets and citations omitted]; see *People v Olds*, 36 NY3d at 1092; *People v Stephenson*, 205 AD3d 1217, 1218-1219 [3d Dept 2022], lv denied 38 NY3d 1153 [2022]).

Similarly, we decline defendant's request to take corrective action in the interest of justice (see CPL 470.15 [3] [c]). Garry, P.J., Reynolds Fitzgerald, McShan and Mackey, JJ., concur. ORDERED that the judgment is affirmed.