

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,  
FOURTH JUDICIAL DEPARTMENT

People v. Semar

2026 N.Y. Slip Op. 03578 (N.Y. Ct. App. 2026) · No. 384 KA 24-01371 · Decided June 5, 2026

SUMMARY

The New York Appellate Division, Fourth Department, affirmed a judgment convicting Michael P. Semar upon his guilty plea to criminal sale of a controlled substance in the fourth degree. The court dismissed the appeal insofar as it challenged the sentence because the original sentence had been superseded by a resentence. It declined to review, in the interest of justice, defendant’s unpreserved challenge to the validity of an order of protection issued for an individual who was neither a victim nor a witness to the crime.

CASE DETAILS

|                       |                                                                                                                                                                                            |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department                                                                                                     |
| WRITING FOR THE COURT | Whalen, P.J.; Bannister, J.; Montour, J.; Nowak, J.; Hannah, J.                                                                                                                            |
| JURISDICTION          | New York Supreme Court, Appellate Division, Fourth Department                                                                                                                              |
| DECIDED               | June 5, 2026                                                                                                                                                                               |
| DOCKET                | 384 KA 24-01371                                                                                                                                                                            |
| DISPOSITION           | other                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | Defendant appealed from a judgment of the Wyoming County Court convicting him upon his guilty plea of criminal sale of a controlled substance in the fourth degree.                        |
| STANDARD OF REVIEW    | Unpreserved claims may be reviewed only in the Appellate Division's discretionary interest-of-justice jurisdiction under CPL 470.15(3)(c); the court declined to exercise that discretion. |
| PRECEDENTIAL VALUE    | Published New York Appellate Division opinion                                                                                                                                              |
| PARTIES               | Michael P. Semar v. The People of the State of New York                                                                                                                                    |

TOPICS

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

## PRACTICE AREAS

criminal law

criminal procedure

appellate practice

## QUESTIONS PRESENTED

1. Whether the appeal from the judgment insofar as it imposed sentence remained viable after the original sentence was superseded by a resentence.
2. Whether the Appellate Division should review defendant's unpreserved challenge to the validity of an order of protection issued for an individual who was allegedly neither a victim nor a witness to the crime.

## HOLDINGS

1. An appeal from a judgment insofar as it imposed a sentence must be dismissed when the sentence originally imposed has been superseded by a resentence.
2. A defendant who fails to object at sentencing to the issuance of an order of protection fails to preserve a challenge to the order's validity for appellate review, and the Appellate Division may decline to review the unpreserved issue in the interest of justice.

## KEY QUOTATIONS

*“inasmuch as the sentence originally imposed has been superseded by a resentence, the appeal from the judgment insofar as it imposed sentence must be dismissed”* ([\*1])

## FACTUAL BACKGROUND

Defendant sold Suboxone to another person and pleaded guilty to criminal sale of a controlled substance in the fourth degree. The County Court issued an order of protection in favor of an individual whom defendant contended was neither a victim of nor a witness to the crime. The sentence originally imposed was later superseded by a resentence.

## PROCEDURAL HISTORY

The Wyoming County Court rendered judgment on June 14, 2024, after defendant pleaded guilty to criminal sale of a controlled substance in the fourth degree. Defendant appealed, challenging the court's authority to issue an order of protection for an individual who was neither a victim nor a witness. Because the original sentence had been superseded by a resentence, the appeal from the judgment insofar as it imposed sentence was dismissed. The challenge to the order of protection was unpreserved and was not reviewed in the interest of justice; the judgment was otherwise affirmed.

## DISPOSITION

other

## CASES CITED

- People v. Weathington (appeal No. 2), 141 AD3d 1173, 1173 (4th Dept 2016), lv denied 28 NY3d 975 (2016)
- People v. Primm, 57 AD3d 1525, 1525 (4th Dept 2008), lv denied 12 NY3d 820 (2009)
- People v. Loverde, 151 AD3d 1738, 1739 (4th Dept 2017)
- People v. Russell, 120 AD3d 1594, 1594-1595 (4th Dept 2014), lv denied 24 NY3d 1046 (2014)
- People v. Collins, 117 AD3d 1535, 1535 (4th Dept 2014), lv denied 24 NY3d 1082 (2014), reconsideration denied 24 NY3d 1218 (2015)

## OPINION

People v. Semar 2026 NY Slip Op 03578

PER CURIAM.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

v MICHAEL P. SEMAR, DEFENDANT-APPELLANT. Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department Decided on June 5, 2026 384 KA 24-01371 Present: Whalen, P.J., Bannister, Montour, Nowak, And Hannah, JJ. LEAH R. NOWOTARSKI, PUBLIC DEFENDER, WARSAW (FARES A. RUMI OF COUNSEL), FOR DEFENDANT-APPELLANT. VINCENT A. HEMMING, DISTRICT ATTORNEY, WARSAW (CHELSIE A. HAMILTON OF COUNSEL), FOR RESPONDENT. Appeal from a judgment of the Wyoming County Court (Melissa Lightcap Cianfrini, A.J.), rendered June 14, 2024. The judgment convicted defendant, upon his plea of guilty, of criminal sale of a controlled substance in the fourth degree. [\*1] It is hereby ORDERED that the appeal from the judgment insofar as it imposed sentence is unanimously dismissed and the judgment is affirmed. Memorandum: Defendant appeals from a judgment convicting him, upon his plea of guilty, of criminal sale of a controlled substance in the fourth degree (Penal Law § 220.34 [1]), arising from defendant's sale of Suboxone to another person. We note at the outset that, inasmuch as the sentence originally imposed has been superseded by a resentence, the appeal from the judgment insofar as it imposed sentence must be dismissed ( see People v Weathington [appeal No. 2], 141 AD3d 1173 , 1173 [4th Dept 2016], lv denied 28 NY3d 975 [2016]; People v Primm , 57 AD3d 1525 , 1525 [4th Dept 2008], lv denied 12 NY3d 820 [2009]). Defendant contends that County Court had no authority to issue an order of protection in favor of an individual who was neither a victim of nor a witness to the crime to which defendant pleaded guilty. Defendant failed to object at sentencing to the issuance of the order of protection and thus failed to preserve for our review his challenge to the validity of that order of protection ( see People v Loverde , 151 AD3d 1738, 1739 [4th Dept 2017]; People v

Russell , 120 AD3d 1594, 1594-1595 [4th Dept 2014], lv denied 24 NY3d 1046 [2014]; People v Collins , 117 AD3d 1535 , 1535 [4th Dept 2014], lv denied 24 NY3d 1082 [2014], reconsideration denied 24 NY3d 1218 [2015]). We decline to exercise our power to review that contention as a matter of discretion in the interest of justice ( see CPL 470.15 [3] [c]). Entered: June 5, 2026 Ann Dillon Flynn Clerk of the Court Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.