

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

People v. Challenger

2026 NY Slip Op 03743 · No. Ind. No. 913/17; Appeal No. 6884; Case Nos. 2022-01451, 2025-03409 · Decided
June 11, 2026

SUMMARY

The Appellate Division, First Department, affirmed a judgment convicting Levi Challenger of second-degree robbery following a guilty plea and an order denying his CPL 440.10 motion to vacate the conviction. The court held that the plea was not induced by an unfulfilled promise because the trial court did not promise that Challenger would serve no more than five years of incarceration or be released within a particular timeframe.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Kennedy, J.P.; Scarpulla, J.; Friedman, J.; Mendez, J.; Pitt-Burke, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	June 11, 2026
DOCKET	Ind. No. 913/17; Appeal No. 6884; Case Nos. 2022-01451, 2025-03409
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of conviction following a guilty plea and from an order denying defendant's CPL 440.10 motion to vacate the conviction.
PRECEDENTIAL VALUE	published
PARTIES	Levi Challenger, Defendant-Appellant v. The People of the State of New York, Respondent

TOPICS

- plea bargaining
- post-conviction relief
- appellate procedure
- criminal procedure
- sentence modification

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether defendant's guilty plea was induced by an unfulfilled promise concerning the maximum period of incarceration and therefore had to be vacated.
2. Whether the sentencing court's statements that defendant would receive credit for all time spent in custody constituted a promise that he would be released after serving no more than five years.

HOLDINGS

1. Defendant was not entitled to vacatur of his guilty plea because the sentencing court did not make an unfulfilled promise regarding the length of his incarceration or the timing of his release.
2. The record did not establish a promise that defendant would serve no more than five years in custody; the court's statements concerned credit for periods of incarceration, not a guaranteed release date or maximum actual time in custody.

KEY QUOTATIONS

"[A] guilty plea induced by an unfulfilled promise either must be vacated or the promise honored" ([*1])

"the record is clear that the court's statements in response to inquiry by defendant that he would be credited for all the time he was in custody in this case merely indicated that all periods of incarceration would be counted in determining whether defendant had completed his five-year sentence." ([*2])

FACTUAL BACKGROUND

After reversal of his initial convictions, defendant pleaded guilty to a single count of robbery in the second degree in exchange for a five-year prison term and five years of postrelease supervision. At sentencing, he had already been incarcerated for 44 days beyond the five-year term, and he remained incarcerated for an additional 47 days before being released to postrelease supervision. Defendant contended that the court had promised he would serve no more than five years and moved to vacate his plea when that did not occur.

PROCEDURAL HISTORY

Defendant's initial jury-trial convictions for robbery in the second degree and assault in the second degree were reversed by the Appellate Division. On remand, defendant pleaded guilty to one count of robbery in the second degree in exchange for a five-year prison term and five years of postrelease supervision. Supreme Court sentenced him accordingly and later denied his motion to vacate the conviction under CPL 440.10. The Appellate Division unanimously affirmed both the judgment and the order.

DISPOSITION

affirmed

CASES CITED

- People v. Challenger, 200 AD3d 500 [1st Dept 2021], lv denied 38 NY3d 949 [2022]
- People v. Selikoff, 35 NY2d 227, 241 [1974], cert denied 419 US 1122 [1975]
- People v. Monroe, 21 NY3d 875, 878 [2013]

OPINION

People v. Challenger 2026 NY Slip Op 03743

PER CURIAM.

People v Challenger - 2026 NY Slip Op 03743 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions People v Challenger 2026 NY Slip Op 03743 June 11, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports. The People of the State of New York, Respondent, v Levi Challenger, Defendant-Appellant. Decided and Entered: June 11, 2026 Ind No. 913/17|Appeal No. 6884|Case No. 2022-01451, 2025-03409| Before: Kennedy, J.P., Scarpulla, Friedman, Mendez, Pitt-Burke, JJ. Jenay Nurse Guilford, Center for Appellate Litigation, New York (John L. Palmer of counsel), for appellant. Alvin L. Bragg, Jr., District Attorney, New York (Andrew Kim of counsel), for respondent. [*1] Judgment, Supreme Court, New York County (Curtis Farber, J.), rendered March 31, 2022, convicting defendant, upon his plea of guilty, of robbery in the second degree, and sentencing him, as a second felony offender, to a prison term of five years plus five years of postrelease supervision; and order, same court and justice, entered on or about April 14, 2025, which denied defendant's motion to vacate his conviction pursuant to CPL 440.10, unanimously affirmed. This Court reversed defendant's initial conviction, after a jury trial, of robbery in the second degree and assault in the second degree, for which the trial court imposed an aggregate prison term of 10 years (see People v Challenger , 200 AD3d 500 [1st Dept 2021], lv denied 38 NY3d 949 [2022]). Following the reversal, defendant pleaded guilty to a single count of robbery in the second degree in exchange for a five-year prison term and five years of postrelease supervision. Defendant was sentenced the same day. On that date, defendant had already been incarcerated for 44 days beyond the five-year prison term imposed by the court. After his plea and sentencing proceeding, he remained incarcerated for an additional 47 days, first in the custody of the New York City Department of Correction and then in the New York State Department of Corrections and Community Supervision, before his release to postrelease supervision on May 17, 2022. "[A] guilty plea induced by an unfulfilled promise either must be vacated or the promise honored" (People v Selikoff , 35 NY2d 227, 241 [1974], cert denied 419 US 1122 [1975]; see also People v Monroe , 21 NY3d 875, 878 [2013]). Here, the court did not make defendant a promise that later it was not able to fulfill. Accordingly defendant is not entitled to have his plea vacated. [*2] Contrary to defendant's contention that the trial court promised him that he would actually serve no more than

five years, a promise that would have been broken as soon as it was uttered, the record is clear that the court's statements in response to inquiry by defendant that he would be credited for all the time he was in custody in this case merely indicated that all periods of incarceration would be counted in determining whether defendant had completed his five-year sentence. Indeed, when the prosecutor reported being informed by DOC that defendant's "additional time will count towards postrelease supervision," the only statement during the plea proceeding that might be construed to imply a promise of no more than five years of incarceration, the court explicitly declined to "make that representation." While the court attempted to expedite the proceedings by sentencing defendant on the same day it took defendant's plea, the court made no representation that defendant would be released "soon," or regarding how long it would take for city and state corrections authorities to process defendant's release and release him to the community. Under these circumstances, there was no unfulfilled promise. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: June 11, 2026 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.