

NEW YORK COURT OF APPEALS

People v. Flesch

2026 NY Slip Op 03258 · No. No. 40 · Decided May 26, 2026

SUMMARY

The New York Court of Appeals held that resentencing before a different judge was not required after the defendant's negotiated probation sentence was determined to be illegal. The court concluded that the conflicted district attorney lacked authority to make a sentencing recommendation, while the appointed special prosecutor accepted shock probation, a lawful alternative consistent with the defendant's stated expectations. The court affirmed the Appellate Division's order.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Rivera, J.; Rivera; Garcia; Singas; Cannataro; Troutman; Wilson, Chief Judge; Halligan
JURISDICTION	New York Court of Appeals
DECIDED	May 26, 2026
DOCKET	No. 40
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an Appellate Division order affirming his judgment of conviction and sentence after he pleaded guilty and was sentenced to four years in prison followed by three years of post-release supervision. The Court of Appeals granted leave to appeal and affirmed.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Johnathon T. Flesch v. The People of the State of New York

TOPICS

- plea bargaining
- sentencing
- criminal procedure
- appellate procedure
- statutory interpretation

PRACTICE AREAS

- criminal law
- criminal procedure
- plea bargaining
- sentencing
- appellate procedure

QUESTIONS PRESENTED

1. Whether the prosecution violated the plea agreement by opposing the promised probation sentence at sentencing.
2. Whether the illegality of the negotiated probation sentence and the appointment of a conflict-free special prosecutor eliminated the need to vacate the sentence and resentence Flesch before a different judge.
3. Whether acceptance of shock probation by the special prosecutor satisfied the defendant's objectively reasonable expectations under the plea agreement.

HOLDINGS

1. Under the unique circumstances presented, the prosecution did not violate the plea agreement in a manner requiring relief because the original probation sentence was illegal, the conflicted District Attorney had no authority to make a sentencing recommendation, and the authorized special prosecutor accepted shock probation, a lawful equivalent consistent with the defendant's legitimate expectations.
2. Vacatur of the sentence and resentencing before a different judge were neither required nor warranted on this record.

KEY QUOTATIONS

*“We reject defendant's claim and affirm the Appellate Division order based on the unique circumstances presented here, where the negotiated sentence was illegal; County Court disqualified the District Attorney and his office based on a conflict of interest; and the court-appointed special prosecutor agreed to the Probation Department's recommended sentence of shock probation, which defendant himself requested as an alternative to probation, and which comported with defendant's expectations under the original plea agreement.” (*1)*

*“A guilty plea induced by an unfulfilled promise either must be vacated or the promise honored” (*4)*

*“Under these circumstances, we reject defendant's claim that the prosecution reneged on the plea agreement.” (*6)*

FACTUAL BACKGROUND

Flesch pleaded guilty to one count of second-degree assault in satisfaction of two indictments in exchange for a recommendation of five years of probation and possible mental-health-treatment-court participation. At sentencing, the newly elected District Attorney opposed probation, but the court disqualified him and his office because he had previously worked on Flesch's defense. The court later determined that straight probation was not legally available for the Class D felony and that Flesch was ineligible for the proposed Monroe County treatment court; the special prosecutor accepted shock probation, but Flesch ultimately declined to withdraw his plea and received four years' imprisonment followed by three years of post-release supervision.

PROCEDURAL HISTORY

Flesch pleaded guilty in Seneca County Court to second-degree assault in satisfaction of two multi-count indictments in exchange for a promised probation recommendation. At sentencing, the newly elected District

Attorney opposed probation and was disqualified because of a conflict arising from his prior representation of Flesch; a special prosecutor was appointed. County Court rejected the original probation sentence as illegal and inappropriate, offered Flesch multiple opportunities to withdraw his plea, and ultimately imposed a four-year determinate prison term. The Appellate Division, Fourth Department, affirmed, and the Court of Appeals affirmed that order.

DISPOSITION

affirmed

CASES CITED

- People v. Collier, 22 NY3d 429 (2013)
- People v. Tindle, 61 NY2d 752 (1984)
- People v. Torres, 67 NY2d 659 (1986)
- Santobello v. New York, 404 U.S. 257 (1971)
- People v. Selikoff, 35 NY2d 227 (1974), cert. denied, 419 U.S. 1122 (1975)
- Paradiso v. United States, 689 F.2d 28 (2d Cir. 1982)
- People v. Cataldo, 39 NY2d 578 (1976)
- People v. Hicks, 98 NY2d 185 (2002)
- People v. Farrar, 52 NY2d 302 (1981)
- People v. Avery, 85 NY2d 503 (1995)
- People v. Rodney E., 77 NY2d 672 (1991)
- People v. Johnson, 14 NY3d 483 (2010)
- People v. Parilla, 8 NY3d 654 (2007)
- People v. Sparber, 10 NY3d 457 (2008)
- People v. Ferguson, 177 AD3d 900 (2d Dept 2019)
- 236 AD3d 1469 (4th Dept 2025)

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