

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

People v. Bruno

2025 NY Slip Op 07396 (Appellate Division of the Supreme Court of the State of New York Second Judicial Department 2025) · No. 2023-03664 · Decided December 31, 2025

SUMMARY

The Appellate Division, Second Department, affirmed a criminal judgment convicting Herbert Bruno upon his guilty plea to attempted promoting prostitution in the second degree and imposing incarceration followed by probation. The court modified the judgment by deleting an additional probation condition barring the defendant from locations predominantly frequented by persons under 18, concluding that the condition was improperly imposed because the sentencing court had intended to strike it.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	Lara J. Genovesi, J.P.; Lillian Wan, J.; Lourdes M. Ventura, J.; Susan Quirk, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	December 31, 2025
DOCKET	2023-03664
DISPOSITION	other
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Supreme Court, Kings County, convicting him upon his guilty plea of attempted promoting prostitution in the second degree and sentencing him to 10 days' incarceration followed by three years of probation with specified conditions.
STANDARD OF REVIEW	Probation conditions are reviewed under the statutory requirement that they be reasonably necessary to ensure that the defendant leads a law-abiding life or to assist the defendant in doing so, and reasonably related to rehabilitation. Unpreserved constitutional claims are generally not reviewable absent discretionary interest-of-justice review.

PRECEDENTIAL VALUE

Published New York Appellate Division decision

PARTIES

Herbert Bruno v. The People of the State of New York

TOPICS

probation

sentencing

criminal procedure

appellate procedure

preservation of error

PRACTICE AREAS

criminal law

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probation

criminal procedure

appellate practice

QUESTIONS PRESENTED

1. Whether the probation conditions requiring family support and other family responsibilities were properly imposed.
2. Whether the additional probation conditions concerning sexually explicit services and materials, computer activity, and probation searches were reasonably related to rehabilitation and necessary to promote lawful conduct.
3. Whether Additional Condition No. 12, prohibiting the defendant from being at locations predominantly frequented by persons under 18 without permission, should be deleted because the sentencing court intended to strike it.
4. Whether the sentence was excessive.

HOLDINGS

1. Under Penal Law § 65.10, probation conditions must be reasonably necessary to ensure that the defendant leads a law-abiding life or to assist the defendant in doing so, must be tailored to the probationer, and may include conditions reasonably related to rehabilitation.
2. The Supreme Court properly imposed the standard probation condition requiring the defendant to support dependents and meet other family responsibilities because the defendant had children whom he was obligated to support.
3. The Supreme Court properly imposed Additional Condition Nos. 3, 5, 7, and 8 because those conditions were reasonably related to the defendant's rehabilitation and necessary to ensure that he would lead a law-abiding life.
4. Additional Condition No. 12 was improperly imposed and had to be deleted because the record showed that the Supreme Court intended to strike it after defense counsel's objection.
5. The sentence imposed was not excessive.

KEY QUOTATIONS

*"Pursuant to Penal Law § 65.10(1), conditions of probation 'shall be such as the court, in its discretion, deems reasonably necessary to insure that [a] defendant will lead a law-abiding life or to assist [the defendant] to do so'" (at *1)*

*“However, as the People concede, Additional Condition No. 12 was improperly imposed, as the record indicates that the Supreme Court intended to strike this condition upon defense counsel's objection.” (at *2)*

FACTUAL BACKGROUND

Herbert Bruno pleaded guilty to attempted promoting prostitution in the second degree. The sentencing court imposed 10 days of incarceration followed by three years of probation, including standard and additional conditions addressing family responsibilities, sexually explicit materials and services, computer activity, probation searches, and locations frequented by persons under 18. The record indicated that the sentencing court intended to strike Additional Condition No. 12 after defense counsel objected, but the condition remained in the judgment.

PROCEDURAL HISTORY

The defendant pleaded guilty in the Supreme Court, Kings County, and was sentenced on March 31, 2023. He appealed, challenging conditions of probation and the excessiveness of the sentence. The Appellate Division modified the judgment by deleting Additional Condition No. 12 and affirmed the judgment as modified.

DISPOSITION

other

CASES CITED

- People v. Dranchuk, 203 A.D.3d 741, 742
- People v. Hakes, 32 N.Y.3d 624, 628
- People v. Hale, 93 N.Y.2d 454, 461
- People v. Archibald, 241 A.D.3d 837, 839
- People v. Suitte, 90 A.D.2d 80

OPINION

PER CURIAM.

People v Bruno (2025 NY Slip Op 07396) People v Bruno 2025 NY Slip Op 07396 Decided on December 31, 2025 Appellate Division, Second 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 on December 31, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department LARA J. GENOVESI, J.P.

LILLIAN WAN LOURDES M. VENTURA SUSAN QUIRK, JJ. 2023-03664 (Ind. No. 70555/21) [*1]The People of the State of New York, respondent, v Herbert Bruno, appellant. Patricia Pazner, New York, NY (Sam Feldman of counsel), for appellant. Eric Gonzalez, District Attorney,

Brooklyn, NY (Leonard Joblove, Michael Bierce, and Kaley Hanenkrat of counsel), for respondent.

DECISION & ORDER Appeal by the defendant from a judgment of the Supreme Court, Kings County (Jane Tully, J.), rendered March 31, 2023, convicting him of attempted promoting prostitution in the second degree, upon his plea of guilty, and sentencing him to a definite term of incarceration of 10 days, to be followed by a term of probation, which included Additional Condition No. 12, requiring the defendant to refrain from being at locations predominantly frequented by persons under the age of 18 unless given permission by the department of probation.

ORDERED that the judgment is modified, on the law, by deleting Additional Condition No. 12 from the conditions of probation; as so modified, the judgment is affirmed. The defendant entered a plea of guilty to attempted promoting prostitution in the second degree and was sentenced to a term of incarceration of 10 days, to be followed by a 3-year term of probation.

As part of the sentence of probation, the Supreme Court imposed conditions of probation, including a condition requiring the defendant to support dependents and meet other family responsibilities (Standard Condition No. 14), as well as additional conditions requiring the defendant to, inter alia, refrain from calling sexual explicit telephone services and submit copies of his telephone bills, upon request, to the department of probation (Additional Condition No. 3), refrain from possessing or viewing pornography or other sexually explicit material in any form (Additional Condition No. 5), consent to a search by a probation officer of his person, vehicle, computer, computer files, and place of abode (when such place of abode is legally under his control) and the seizure of any sexually explicit materials or data found (Additional Condition No. 7), refrain from engaging in any computer activity or service that involves sexually explicit material or any computer contact for the purpose of establishing a sexual relationship with a minor (Additional Condition No. 8), and refrain from being at locations predominantly frequented by persons under the age of 18 unless given permission by the department of probation (Additional Condition No. 12).

The defendant appeals. "Pursuant to Penal Law § 65.10(1), conditions of probation 'shall be such as the court, in its discretion, deems reasonably necessary to insure that [a] defendant will lead a law-abiding life or to assist [the defendant] to do so'" (*People v Dranchuk*, 203 AD3d 741, 742, quoting Penal Law § 65.10[1]; see *People v Hakes*, 32 NY3d 624, 628).

"The conditions and requirements are to be [*2]tailored to suit the probationer" (*People v Hale*, 93 NY2d 454, 461), and the sentencing court is empowered to require that the probationer "[s]atisfy any other conditions reasonably related to his [or her] rehabilitation" (Penal Law § 65.10[2][1]; see *People v Hale*, 93 NY2d at 461).

Here, the Supreme Court properly imposed Standard Condition No. 14, as the defendant has children for whom he is obligated to provide support (see Penal Law § 65.10[2][f]; *People v Archibald*, 241 AD3d 837, 839). The defendant's constitutional challenge to so much of this condition as required him to "meet other family responsibilities" is unpreserved for appellate review (see *People v Archibald*, 241 AD3d at 839), and we decline to reach it in the exercise of our interest of justice jurisdiction.

The Supreme Court also properly imposed Additional Condition Nos. 3, 5, 7, and 8, as these conditions were reasonably related to the defendant's rehabilitation and necessary to ensure that the defendant will lead a law-abiding life (see Penal Law § 65.10[4-a], [5-a]; *People v Hale*, 93 NY2d at 461).

However, as the People concede, Additional Condition No. 12 was improperly imposed, as the record indicates that the Supreme Court intended to strike this condition upon defense counsel's objection. Accordingly, we modify the conditions of probation by deleting Additional Condition No. 12.

The sentence imposed was not excessive (see *People v Suitte*, 90 AD2d 80). GENOVESI, J.P., WAN, VENTURA and QUIRK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

PER CURIAM.

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However, as the People concede, Additional Condition No. 12 was improperly imposed, as the record indicates that the Supreme Court intended to strike this condition upon defense counsel's objection. Accordingly, we modify the conditions of probation by deleting Additional Condition No. 12.

The sentence imposed was not excessive (see *People v Suite*, 90 AD2d 80). GENOVESI, J.P., WAN, VENTURA and QUIRK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court