

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

People v. Perez

Perez, 2026 NY Slip Op 00210 (Appellate Division of the Supreme Court of the State of New York First Department 2026) · No. SCI No. 40/21; Appeal No. 5603; Case No. 2023-00205 · Decided January 15, 2026

SUMMARY

The Appellate Division, First Department unanimously reversed the defendant's burglary conviction, vacated his guilty plea, and remanded for further proceedings. The court held that the record did not establish compliance with the constitutional and statutory requirement that a waiver of indictment be signed by the defendant in open court in the presence of counsel, making the defect jurisdictional.

CASE DETAILS

|                       |                                                                                                                                                                                                                              |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Appellate Division of the Supreme Court of the State of New York, First Department                                                                                                                                           |
| WRITING FOR THE COURT | Kennedy, J.P.; Gesmer, J.; Rodriguez, J.; Pitt-Burke, J.; Chan, J.                                                                                                                                                           |
| JURISDICTION          | New York Appellate Division, First Department                                                                                                                                                                                |
| DECIDED               | January 15, 2026                                                                                                                                                                                                             |
| DOCKET                | SCI No. 40/21; Appeal No. 5603; Case No. 2023-00205                                                                                                                                                                          |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                        |
| PROCEDURAL POSTURE    | Defendant appealed from a judgment of the Supreme Court, Bronx County, convicting him of burglary in the third degree after a guilty plea and sentencing him as a second felony offender to two to four years' imprisonment. |
| PRECEDENTIAL VALUE    | Published New York Appellate Division opinion                                                                                                                                                                                |
| PARTIES               | Jose Perez, Defendant-Appellant v. The People of the State of New York, Respondent                                                                                                                                           |

TOPICS

- criminal procedure
- appellate procedure
- right to counsel
- constitutional law

PRACTICE AREAS

- criminal law
- criminal procedure
- appellate procedure

## QUESTIONS PRESENTED

1. Whether defendant's waiver of indictment was valid under article I, § 6 of the New York Constitution and CPL 195.20 when the record did not demonstrate that he signed the written waiver in open court in the presence of counsel.
2. Whether defendant's guilty plea was knowingly, intelligently, and voluntarily entered.
3. Whether the trial court improperly issued a final order of protection.

## HOLDINGS

1. The waiver of indictment was invalid because the record did not demonstrate that defendant signed the written waiver in open court in the presence of counsel as required by article I, § 6 of the New York Constitution and CPL 195.20.
2. The court declined to reach whether defendant's guilty plea was knowingly, intelligently, and voluntarily entered because reversal was required on the invalid-waiver-of-indictment ground.
3. Defendant's challenge to the final order of protection was moot because the conviction was vacated, but the order was directed to remain in force pending further proceedings.

## KEY QUOTATIONS

*“Compliance with this unequivocal dictate is indispensable to a knowing and intelligent waiver and the failure to adhere to this strict procedure is a jurisdictional defect which survives a guilty plea and appeal waiver and need not be preserved” (\*1)*

## FACTUAL BACKGROUND

Defendant was charged under a superior court information and pleaded guilty to burglary in the third degree. The purported written waiver of indictment was dated February 3, 2021, the same date the superior court information was issued, but the record showed no appearance in the case on that date. The trial court's description of the waiver suggested that it may have been signed before the plea, and the record did not clearly establish that defendant signed it in open court in the presence of counsel.

## PROCEDURAL HISTORY

The Supreme Court, Bronx County, accepted defendant's guilty plea and rendered judgment on July 1, 2022. On appeal, the Appellate Division unanimously reversed the judgment, vacated the plea, and remanded for further proceedings because the record did not establish a valid waiver of indictment. The court did not reach defendant's challenge to the voluntariness of his guilty plea and deemed his challenge to the final order of protection moot, while directing that the order remain in force pending further proceedings.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Vacate the guilty plea and remand for further proceedings. The final order of protection is to remain in force pending further proceedings.

#### CASES CITED

- People v. Smith, 242 A.D.3d 616 (1st Dep't 2025)

#### OPINION

#### PER CURIAM.

People v Perez ( 2026 NY Slip Op 00210 ) People v Perez 2026 NY Slip Op 00210 Decided on January 15, 2026 Appellate Division, First 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: January 15, 2026 Before: Kennedy, J.P., Gesmer, Rodriguez, Pitt-Burke, Chan, JJ. SCI No. 40/21|Appeal No. 5603|Case No. 2023-00205| [\*1]The People of the State of New York, Respondent, v Jose Perez, Defendant-Appellant.

Twyla Carter, The Legal Aid Society, New York (Isabel Patkowski of counsel), for appellant. Darcel D. Clark, District Attorney, Bronx (Vincent Rivelles of counsel), for respondent. Judgment, Supreme Court, Bronx County (Linda Poust-Lopez, J., at plea; Judith S. Lieb, J., at sentencing), rendered July 1, 2022, convicting defendant of burglary in the third degree, and sentencing him, as a second felony offender, to a term of 2 to 4 years, unanimously reversed, on the law, the plea vacated and the case remanded for further proceedings.

Defendant's waiver of indictment under SCI No. 40-2021 was invalid because the record does not demonstrate that defendant satisfied the requirement of NY Constitution, art 1, § 6 and CPL 195.20 that the written waiver of indictment must be signed by the defendant in open court in the presence of his or her counsel ( see People v Smith, 242 AD3d 616 [1st Dept 2025]).

The indictment waiver was dated February 3, 2021, the same date on which the SCI was issued, but a date on which there appears to have been no appearance in this case. Further, the court's description of the indictment waiver suggested that the court understood it to have been signed before the day of the plea.

The record as a whole does not clearly support an inference that the "open court" requirement was satisfied. A less than compelling inference does not fulfill the "unequivocal dictate" that the record demonstrate that the defendant signed the waiver in open court ( id. ). "Compliance with this unequivocal dictate is indispensable to a knowing and intelligent waiver and the failure to adhere to this strict procedure is a jurisdictional defect which survives a guilty plea and appeal waiver and need not be preserved" ( id. ).

Because we reverse on this ground, we need not address defendant's argument that his guilty plea was not knowingly, intelligently, and voluntarily entered. Defendant's contention that the court improperly issued a final order of protection is moot in light of our vacatur of defendant's conviction.

We direct that the order remain in force pending further proceedings in this case. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: January 15, 2026