

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

People v. Diallo

Diallo, 2026 NY Slip Op 02888 (Appellate Division of the Supreme Court of the State of New York First Department 2026) · No. Ind. No. 71086/23; Appeal No. 6560; Case No. 2024-06375 · Decided May 7, 2026

SUMMARY

The New York Appellate Division, First Department, modified the defendant's judgment in the interest of justice by vacating the mandatory surcharge and fees imposed at sentencing. The court otherwise affirmed the conviction for attempted second-degree possession of a weapon and the one-year imprisonment sentence.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Moulton, J.P.; Gesmer, J.; Higgitt, J.; Michael, J.; Chan, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	May 7, 2026
DOCKET	Ind. No. 71086/23; Appeal No. 6560; Case No. 2024-06375
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Supreme Court, Bronx County, convicting him of attempted second-degree possession of a weapon and sentencing him to one year of imprisonment.
STANDARD OF REVIEW	Interest-of-justice review; the court exercised its own interest-of-justice powers.
PRECEDENTIAL VALUE	Published
PARTIES	Mamadou Diallo v. The People of the State of New York

TOPICS

- sentencing
- criminal procedure
- appellate procedure
- remedies

PRACTICE AREAS

- criminal law
- criminal procedure
- sentencing
- appellate practice

QUESTIONS PRESENTED

- 1. Whether the appellate court should exercise its interest-of-justice powers to vacate the mandatory surcharge and fees imposed at sentencing.
- 2. Whether the judgment should otherwise be affirmed.

HOLDINGS

- 1. The court exercised its interest-of-justice powers to vacate the mandatory surcharge and fees imposed on defendant at sentencing.
- 2. The judgment was affirmed in all other respects.

KEY QUOTATIONS

“Judgment, Supreme Court, Bronx County (Alvin M. Yearwood, J.), rendered September 04, 2024, convicting defendant of attempted second degree possession of a weapon, and sentencing him to one year imprisonment, unanimously modified, as a matter of discretion in the interest of justice, to the extent of vacating the surcharge and fees imposed on defendant at sentencing, and otherwise affirmed.” ([*1])

FACTUAL BACKGROUND

Defendant Mamadou Diallo was convicted of attempted second-degree possession of a weapon. The Supreme Court, Bronx County, sentenced him to one year of imprisonment and imposed a mandatory surcharge and fees. The People did not oppose vacatur of the surcharge and fees.

PROCEDURAL HISTORY

The Supreme Court, Bronx County, rendered judgment on September 4, 2024, after convicting defendant of attempted second-degree possession of a weapon and imposing a one-year prison sentence, together with a mandatory surcharge and fees. On appeal, the First Department vacated the surcharge and fees in the interest of justice and affirmed the judgment in all other respects.

DISPOSITION

affirmed

CASES CITED

- People v. Chirinos, 190 A.D.3d 434 (1st Dep't 2021)

OPINION

People v. Diallo 2026 NY Slip Op 02888

PER CURIAM.

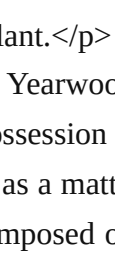
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May 7, 2026

Appellate Division, First Department

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This decision is uncorrected and subject to revision before publication in the Official Reports.

The People of the State of New York, Respondent,

v

Mamadou Diallo, Defendant-Appellant.

Decided and Entered: May 07, 2026

Ind No. 71086/23|Appeal No. 6560|Case No. 2024-06375|

Before: Moulton, J.P., Gesmer, Higgitt, Michael, Chan, JJ.

Jenay Nurse Guilford, Center for Appellate Litigation, New York (David J. Klem of counsel), for appellant.

[*1]

Judgment, Supreme Court, Bronx County (Alvin M. Yearwood, J.), rendered September 04, 2024, convicting defendant of attempted second degree possession of a weapon, and sentencing him to one year imprisonment, unanimously modified, as a matter of discretion in the interest of justice, to the extent of vacating the surcharge and fees imposed on defendant at sentencing, and otherwise affirmed.

Based on our own interest of justice powers, we vacate the mandatory surcharge and fees imposed on defendant at sentencing (*People v Chirinos*, 190 AD3d 434 [1st Dept 2021]). We note that the People do not oppose this relief.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 7, 2026

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Gesmer, Higgitt, Michael, Chan, JJ. Jenay Nurse Guilford, Center for Appellate Litigation, New York (David J. Klem of counsel), for appellant. [*1] Judgment, Supreme Court, Bronx County (Alvin M. Yearwood, J.), rendered September 04, 2024, convicting defendant of attempted second degree possession of a weapon, and sentencing him to one year imprisonment, unanimously modified, as a matter of discretion in the interest of justice, to the extent of vacating the surcharge and fees imposed on defendant at sentencing, and otherwise affirmed. Based on our own interest of justice powers, we vacate the mandatory surcharge and fees imposed on defendant at sentencing (People v Chirinos , 190 AD3d 434 [1st Dept 2021]). We note that the People do not oppose this relief. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: May 7, 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. PER CURIAM.

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