

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

People v. Whitney

2026 NY Slip Op 00266 (2d Dep't 2026) · No. 2022-08162 · Decided January 21, 2026

SUMMARY

The Appellate Division, Second Department, affirmed Terrell Whitney's judgment of conviction for attempted criminal possession of a weapon in the second degree following his guilty plea. The court held that his waiver of the right to appeal was valid, but concluded that his constitutional challenge to New York's firearm licensing scheme under *New York State Rifle & Pistol Assn., Inc. v. Bruen* was unpreserved because it was not raised before the trial court.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Per Curiam; Colleen D. Duffy, J.P.; Francesca E. Connolly, J.; Laurence L. Love, J.; Susan Quirk, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	January 21, 2026
DOCKET	2022-08162
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed from a judgment of the Supreme Court, Kings County, entered after his guilty plea to attempted criminal possession of a weapon in the second degree and imposition of sentence.
STANDARD OF REVIEW	The constitutional challenge was reviewed for preservation under CPL 470.05(2); the court declined to exercise its interest-of-justice jurisdiction to reach the unpreserved issue.
PRECEDENTIAL VALUE	Published
PARTIES	Terrell Whitney v. The People of the State of New York

TOPICS

- criminal procedure
- appellate procedure
- preservation of error
- second amendment
- plea bargaining

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

constitutional law

QUESTIONS PRESENTED

1. Whether the defendant's waiver of his right to appeal was valid.
2. Whether the valid appeal waiver precluded the defendant's constitutional challenge to New York's firearm licensing scheme under *New York State Rifle & Pistol Assn., Inc. v. Bruen*.
3. Whether the constitutional challenge was preserved for appellate review and, if not, whether the court should reach it in the interest of justice.

HOLDINGS

1. The defendant's waiver of his right to appeal was valid because it was mentioned as a condition of the plea agreement before the guilty plea and admission of guilt, and under the totality of the circumstances was knowing, voluntary, and intelligent.
2. The defendant's constitutional challenge to New York's firearm licensing scheme under *New York State Rifle & Pistol Assn., Inc. v. Bruen* was not precluded by his valid waiver of the right to appeal.
3. Because the defendant failed to raise the constitutional challenge before the Supreme Court, the issue was unpreserved for appellate review, and the court declined to reach it in the exercise of its interest-of-justice jurisdiction.

KEY QUOTATIONS

*“Under the totality of the circumstances, the appeal waiver was knowing, voluntary, and intelligent” (*1)*

*“However, as the defendant failed to raise the constitutional challenge before the Supreme Court, it is unpreserved for appellate review” (*1)*

FACTUAL BACKGROUND

Whitney pleaded guilty to attempted criminal possession of a weapon in the second degree and received a sentence. His plea agreement included a waiver of his right to appeal, and he later challenged New York's firearm licensing scheme in light of *New York State Rifle & Pistol Assn., Inc. v. Bruen*.

PROCEDURAL HISTORY

The Supreme Court, Kings County, rendered judgment on September 15, 2022. On appeal, the defendant challenged the validity and effect of his appeal waiver and raised a constitutional challenge to New York's firearm licensing scheme under *New York State Rifle & Pistol Assn., Inc. v. Bruen*. The Appellate Division affirmed, holding that the appeal waiver was valid but that the constitutional challenge, although not barred by the waiver, was unpreserved and would not be reached in the interest of justice.

DISPOSITION

affirmed

CASES CITED

- People v. Richards, 238 AD3d 1176, 1176
- People v. Victor, 235 AD3d 783, 784
- People v. Sutton, 184 AD3d 236, 245
- People v. Sanders, 25 NY3d 337, 340
- People v. Bradshaw, 18 NY3d 257, 264
- New York State Rifle & Pistol Assn., Inc. v. Bruen, 597 US 1
- People v. Johnson, 2025 NY Slip Op 06528, *3
- People v. Johnson, 2025 NY Slip Op 06528, *3-4 (Cannataro, J., concurring)
- People v. Cabrera, 41 NY3d 35, 42

OPINION

People v. Whitney 2026 NY Slip Op 00266

PER CURIAM.

People v Whitney (2026 NY Slip Op 00266) People v Whitney 2026 NY Slip Op 00266 Decided on January 21, 2026 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 January 21, 2026

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Second Judicial Department COLLEEN D. DUFFY, J.P.

FRANCESCA E. CONNOLLY

LAURENCE L. LOVE

SUSAN QUIRK, JJ. 2022-08162

(Ind. No. 46/20) [*1]The People of the State of New York, respondent, v Terrell Whitney, appellant. Patricia Pazner, New York, NY (Steven C. Kuza of counsel), for appellant. Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove and Ann Bordley of counsel), for respondent. DECISION & ORDER Appeal by the defendant from a judgment of the Supreme Court, Kings County (Jill Hedy Konviser, J.), rendered September 15, 2022, convicting him of attempted criminal possession of a weapon in the second degree, upon his plea of guilty, and imposing sentence. ORDERED that the judgment is affirmed. The defendant's waiver of his right to appeal was valid (see People v Richards , 238 AD3d 1176 , 1176; People v Victor , 235 AD3d 783 , 784). Contrary to the defendant's contention, the appeal waiver was mentioned as being a condition of the plea agreement prior to the defendant's plea of guilty and admission of guilt (see People v Sutton , 184 AD3d 236, 245). Under the totality of the circumstances, the appeal waiver was knowing, voluntary, and intelligent (see People v Sanders , 25 NY3d 337, 340 ; People v

Bradshaw , 18 NY3d 257, 264). The defendant's constitutional challenge to the State's firearm licensing scheme in light of New York State Rifle & Pistol Assn., Inc. v Bruen (597 US 1) is not precluded by his valid appeal waiver (see People v Johnson , _____ NY3d _____, _____, 2025 NY Slip Op 06528, *3). However, as the defendant failed to raise the constitutional challenge before the Supreme Court, it is unpreserved for appellate review (see CPL 470.05[2]; People v Johnson , _____ NY3d at _____, 2025 NY Slip Op 06528, *3-4 [Cannataro, J., concurring]; People v Cabrera , 41 NY3d 35 , 42), and we decline to reach it in the exercise of our interest of justice jurisdiction. DUFFY, J.P., CONNOLLY, LOVE and QUIRK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court