

**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.

OPINION

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