

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

People v. Nesbitt

2026 NY Slip Op 02480 [3d Dept 2026] · No. 113194B · Decided April 23, 2026

SUMMARY

The Appellate Division, Third Department held that Anthony Nesbitt’s appeal waiver was invalid because it did not adequately explain the surviving rights to direct appellate and collateral review. The court nevertheless upheld the agreed-upon consecutive sentences and affirmed the judgment of conviction, while directing any request concerning attachment of a support letter to the County Court.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Mackey, J.; Garry, P.J.; Reynolds Fitzgerald, J.; Powers, J.; Ryba, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	April 23, 2026
DOCKET	113194B
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a Schenectady County Court judgment convicting him, upon his guilty plea, of criminal contempt in the first degree, attempted assault in the second degree, and menacing in the second degree. The Appellate Division had previously rejected assigned counsel's Anders brief, withheld decision, and assigned new appellate counsel.
STANDARD OF REVIEW	The court reviewed the validity of the appeal waiver de novo and reviewed the sentence for propriety and whether it was unduly harsh or severe, including whether modification in the interest of justice was warranted under CPL 470.15.
PRECEDENTIAL VALUE	published
PARTIES	Anthony Nesbitt v. The People of the State of New York

TOPICS

criminal procedure

appellate procedure

sentencing

preservation of error

standard of review

PRACTICE AREAS

criminal procedure

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sentencing

QUESTIONS PRESENTED

1. Whether defendant's written and oral appeal waiver was knowing, intelligent, and voluntary.
2. Whether the invalid appeal waiver precluded defendant's challenge to the severity of his sentence.
3. Whether the agreed-upon consecutive sentences were improper or unduly harsh or severe.
4. Whether the Appellate Division should modify the sentence in the interest of justice.
5. Whether relief concerning the omission of a support letter from the presentence report should be sought in County Court.

HOLDINGS

1. The appeal waiver was invalid because the written waiver and brief oral colloquy did not clarify that defendant retained the right to seek collateral relief in state or federal court.
2. Because the appeal waiver was invalid, defendant's challenge to the severity of his sentence was not precluded.
3. The agreed-upon consecutive sentences were not improper or unduly harsh or severe, and the court declined to modify the sentence in the interest of justice.
4. Any request for relief concerning County Court's failure to attach the fiancée's support letter to the presentence report should be addressed to County Court.

FACTUAL BACKGROUND

Defendant pleaded guilty to criminal contempt in the first degree, attempted assault in the second degree, and menacing in the second degree in satisfaction of an 11-count indictment. The plea agreement included a waiver of the right to appeal, and County Court imposed the agreed-upon consecutive felony sentences and a concurrent sentence on the menacing conviction. Defendant also claimed that the court failed to attach his fiancée's support letter to the presentence report.

PROCEDURAL HISTORY

Defendant pleaded guilty in satisfaction of an 11-count indictment pursuant to an agreement requiring an appeal waiver. County Court sentenced him as a second felony offender to agreed-upon consecutive terms of two to four years on two felony convictions and a lesser concurrent sentence for menacing. On appeal, the Third Department held the appeal waiver invalid, considered defendant's sentencing challenges, rejected them, and affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

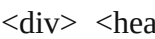
- People v. Appiah, 218 AD3d 1060, 1061 [3d Dept 2023], revd on different grounds, 41 NY3d 949 [2024]
- People v. Paige, 243 AD3d 1022, 1023 [3d Dept 2025]
- People v. Gouge, 239 AD3d 1143, 1144 [3d Dept 2025]
- People v. Loadholt, 234 AD3d 1188, 1189 [3d Dept 2025]
- People v. Nesbitt, 237 AD3d 1366 [3d Dept 2025]

OPINION

PER CURIAM.

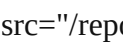
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April 23, 2026

Appellate Division, Third 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

Anthony Nesbitt, Appellant.

Decided and Entered: April 23, 2026

113194B

Calendar Date: March 25, 2026

Before: Garry, P.J., Reynolds Fitzgerald, Powers, Mackey And Ryba, JJ.

Cynthia Feathers, Saratoga Springs, for appellant.

Robert M. Carney, District Attorney, Schenectady (Peter H. Willis of counsel), for respondent.

*1

Mackey, J.

Appeal from a judgment of the County Court of Schenectady County (Mark Caruso, J.), rendered August 30, 2021, convicting defendant upon his plea of guilty of the crimes of criminal contempt in the first degree, attempted assault in the second degree and menacing in the second degree.

In satisfaction of an 11-count indictment, defendant pleaded guilty to the crimes of criminal contempt in the first degree, attempted assault in the second degree and menacing in the second degree.

The plea agreement also required defendant to waive his right to appeal. County Court thereafter sentenced defendant, as a second felony offender, to the agreed-upon consecutive terms of

imprisonment of 2 to 4 years on the two felony convictions and to a lesser concurrent sentence on the menacing conviction. Defendant appealed, and this Court rejected counsel's *Anders* brief, withheld decision and assigned new counsel to represent defendant on appeal (237 AD3d 1366 [3d Dept 2025]).

Initially, we agree with defendant that his appeal waiver is invalid. The written waiver signed by defendant indicates that it "mark[s] the end of [his] case" and advises that he is waiving the right to appeal any matters "which [he] may collaterally attack in any state or federal court." While the written waiver and the brief oral colloquy do advise that some direct appellate review survives, neither clarified that defendant's right to seek collateral relief also survives.

Accordingly, defendant's appeal waiver is not knowing, intelligent or voluntary (*see People v Appiah*, 218 AD3d 1060, 1061 [3d Dept 2023], *rev'd on different grounds* 41 NY3d 949 [2024]). As a result, defendant's challenge to the severity of his sentence is not precluded (*see People v Paige*, 243 AD3d 1022, 1023 [3d Dept 2025]; *People v Gouge*, 239 AD3d 1143, 1144 [3d Dept 2025]).

That said, we do not find the imposition of the agreed-upon consecutive sentences to be improper (*see People v Loadholt*, 234 AD3d 1188, 1189 [3d Dept 2025]) or unduly harsh or severe (*see CPL 470.15 [6] [b]*), and we decline defendant's invitation to modify his sentence in the interest of justice (*see CPL 470.15 [3] [c]*).

Finally, although defendant contends that County Court failed to follow through with its commitment at sentencing to attach a letter of support written by his fiancée to his presentence report, any request for such relief should be addressed to County Court.

Garry, P.J., Reynolds Fitzgerald, Powers and Ryba, JJ., concur.

ORDERED that the judgment is affirmed.

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