

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

The People of the State of New York v. Jorge L. Andujar

2026 NY Slip Op 00208 · No. Ind No. 73760/23; Appeal No. 5632; Case No. 2024-05366 · Decided January 15, 2026

SUMMARY

The Appellate Division, First Department, modified the judgment convicting Jorge L. Andujar of criminal possession of a weapon in the third degree by granting his application for a certificate of relief from disabilities, and otherwise affirmed. The court upheld the probation condition concerning injurious or vicious habits, unlawful or disreputable places, and disreputable associations, rejecting or declining to review the defendant's related challenges.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Kern, J.P.; Scarpulla, J.; Kapnick, J.; Shulman, J.; Hagler, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	January 15, 2026
DOCKET	Ind No. 73760/23; Appeal No. 5632; Case No. 2024-05366
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Supreme Court, Bronx County, entered after his guilty plea and imposing five years of probation. The Appellate Division unanimously modified the judgment in the interest of justice to grant a certificate of relief from disabilities and otherwise affirmed.
STANDARD OF REVIEW	The court reviewed the preserved and unpreserved claims under the applicable preservation rules, considered the constitutional challenge alternatively on the merits, and exercised discretionary interest-of-justice review concerning the certificate of relief from disabilities.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Jorge L. Andujar, Defendant-Appellant v. The People of the State of New York, Respondent

TOPICS

probation criminal procedure due process appellate procedure preservation of error

PRACTICE AREAS

criminal law criminal procedure constitutional law probation appellate procedure

QUESTIONS PRESENTED

1. Whether defendant's valid waiver of the right to appeal foreclosed review of his excessive-sentence claim.
2. Whether the probation condition prohibiting injurious or vicious habits, frequenting unlawful or disreputable places, and consorting with disreputable people was reasonably necessary and sufficiently definite.
3. Whether defendant's facial constitutional challenge to Penal Law §§ 65.10(2)(a) and (b) was preserved or waived and, alternatively, whether the challenge had merit under the First, Fifth, and Fourteenth Amendments.
4. Whether the Appellate Division should grant defendant a certificate of relief from disabilities in the interest of justice.

HOLDINGS

1. Defendant's valid waiver of the right to appeal foreclosed review of his excessive-sentence claim; in any event, there was no basis for reducing the sentence.
2. The challenge to the probation condition survived the appeal waiver and did not require preservation, but the condition was properly imposed because it was reasonably necessary to ensure that defendant would lead a law-abiding life or to assist him in doing so.
3. The constitutional challenge was unpreserved, and the court declined to review it in the interest of justice. Alternatively, the challenge was unavailing because the probation condition provided fair notice to a person of ordinary intelligence.
4. The court granted defendant's application for a certificate of relief from disabilities as a matter of discretion in the interest of justice.

KEY QUOTATIONS

"Avoid injurious or vicious habits; refrain from frequenting unlawful or disreputable places; and [to] not consort with disreputable people" (at *1)

"reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so" (at *1)

"The probation condition provides fair notice to 'a person of ordinary intelligence'" (at *1)

FACTUAL BACKGROUND

Defendant pleaded guilty to criminal possession of a weapon in the third degree after possessing an assault weapon. The record reflected a history of mental health issues and aggressive conduct. The challenged probation condition prohibited injurious or vicious habits, frequenting unlawful or disreputable places, and consorting with disreputable people. Defendant had worked for more than 24 years at a senior center, and the court found that a certificate of relief from disabilities would help ensure his continued employment there.

PROCEDURAL HISTORY

The Supreme Court, Bronx County, rendered judgment on July 31, 2024, convicting defendant upon his guilty plea of criminal possession of a weapon in the third degree and sentencing him to five years of probation. On appeal, defendant challenged the sentence, a probation condition, and the constitutionality of Penal Law §§ 65.10(2)(a) and (b), and sought a certificate of relief from disabilities. The Appellate Division rejected or declined to review the challenges and granted the certificate as a matter of discretion in the interest of justice.

DISPOSITION

affirmed

CASES CITED

- People v. Thomas, 34 NY3d 545, 559 (2019), cert. denied, 589 U.S. —, 140 S. Ct. 2634 (2020)
- People v. Nunez, 220 AD3d 597, 597 (1st Dept. 2023), lv. denied, 41 NY3d 1004 (2024)
- People v. Lowndes, 239 AD3d 574, 575 (1st Dept. 2025), lv. denied, 44 NY3d 1012 (2025)
- People v. Alvarez, 233 AD3d 619, 620 (1st Dept. 2024), lv. denied, 43 NY3d 961 (2025)
- People v. Holguin, 243 AD3d 419, 419 (1st Dept. 2025)
- People v. Rivera, 242 AD3d 421 (1st Dept. 2025)
- People v. Johnson, NY Slip Op 06528, *2-4 (2025)
- People v. Cabrera, 41 NY3d 35, 42-51 (2023)
- People v. Carasquillo, 242 AD3d 424 (1st Dept. 2025)
- People v. Stuart, 100 NY2d 412, 420 (2003)
- People v. Thompson, 189 AD3d 1969, 1969-1970 (3d Dept. 2020)
- People v. Fofana, 236 AD3d 607, 608 (1st Dept. 2025), lv. denied, 43 NY3d 1008 (2025)

OPINION

PER CURIAM.

People v Andujar (2026 NY Slip Op 00208) People v Andujar 2026 NY Slip Op 00208 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: Kern, J.P., Scarpulla, Kapnick, Shulman, Hagler, JJ. Ind No. 73760/23|Appeal No. 5632|Case No.

2024-05366| [*1]The People of the State of New York, Respondent, v Jorge L. Andujar, Defendant-Appellant.

Jenay Nurse Guilford, Center for Appellate Litigation, New York (Abigail Everett of counsel), for appellant. Darcel D. Clark, District Attorney, Bronx (Noah J. Sexton of counsel), for respondent. Letitia James, Attorney General State of New York (James F. Gibbons of counsel), as intervenor in support of State, respondent. Judgment, Supreme Court, Bronx County (Audrey E. Stone, J.), rendered July 31, 2024, convicting defendant, upon his plea of guilty, of criminal possession of a weapon in the third degree, and sentencing him to five years of probation, unanimously modified, as a matter of discretion in the interest of justice, to the extent of granting defendant's application for a certificate of relief from disabilities, and otherwise affirmed.

Defendant validly waived his right to appeal (see *People v Thomas*, 34 NY3d 545, 159[2019], cert denied 589 US —, 140 SCt 2634 [2020]), which forecloses review of his excessive sentence claim (see *People v Nunez*, 220 AD3d 597, 597 [1st Dept 2023], lv denied 41 NY3d 1004 [2024]).

In any event, there is no basis for reducing the sentence. Defendant's challenge to the condition of probation requiring him to "[a]void injurious or vicious habits; refrain from frequenting unlawful or disreputable places; and [to] not consort with disreputable people" survives his waiver of the right to appeal and does not require preservation (see *People v Lowndes*, 239 AD3d 574, 575 [1st Dept 2025], lv denied 44 NY3d 1012 [2025]; *People v Alvarez*, 233 AD3d 619, 620 [1st Dept 2024], lv denied 43 NY3d 961 [2025]).

However, the court providently deemed this condition "reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so" (Penal Law § 65.10[1]), given that he possessed an assault weapon, he had a history of mental health issues, and he engaged in aggressive conduct (see *People v Holguin*, 243 AD3d 419, 419 [1st Dept 2025]; *People v Rivera*, 242 AD3d 421 [1st Dept 2025]; *Lowndes*, 239 AD3d at 575).

Regardless of whether or not defendant's constitutional challenge to the same probation condition through his facial challenge to the constitutionality of Penal Law §§ 65.10(2)(a) and (b) under the First, Fifth, and Fourteenth Amendments is waived by the valid appeal waiver (see *People v Johnson*, — NY3d —, NY Slip Op 06528, *2-4 [2025]), the claim is unpreserved (*People v Cabrera*, 41 NY3d 35, 42-51 [2023]), and we decline to review it in the interest of justice.

As an alternative holding, the claims are unavailing (see *People v Carasquillo*, 242 AD3d 424 [1st Dept 2025]). The probation condition provides fair notice to "a person of ordinary intelligence" (*People v Stuart*, 100 NY2d 412, 420 [2003] [internal quotation marks omitted]) that associating with perpetrators of crimes, engaging in criminal behavior or behavior that could cause injury, or

frequenting locations where criminal activity occurs is prohibited (see e.g. People v Thompson, 189 AD3d 1969, 1969-1970 [3d Dept 2020]).

In our discretion and in the interest of justice, we grant defendant's application for a certificate of relief from disabilities (see People v Fofana, 236 AD3d 607, 608 [1st Dept 2025], lv denied 43 NY3d 1008 [2025]; Correction Law §§ 700[1][a], [c], 702[2][a]-[c]).

As stated in the presentence report, defendant is eligible for this relief, and it would help ensure his continued employment at the senior center, where he has worked for more than 24 years. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: January 15, 2026