

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

People v. Rivera

2026 NY Slip Op 03188 (N.Y. Ct. App. 2026) · No. 2023-07318 · Decided May 20, 2026

SUMMARY

The New York Appellate Division, Second Department, affirmed a judgment convicting Luis Rivera of robbery in the third degree upon his guilty plea. The court held that Rivera's valid waiver of the right to appeal barred review of his speedy-trial and Erlinger-based sentencing challenges, while his facial constitutional challenge to New York's predicate felony offender statutes was unpreserved and not reviewed in the interest of justice.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Angela G. Iannacci, J.P.; Valerie Brathwaite Nelson, J.; Carl J. Landicino, J.; Elena Goldberg Velazquez, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	May 20, 2026
DOCKET	2023-07318
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Supreme Court, Kings County, rendered after his guilty plea, convicting him of robbery in the third degree and imposing sentence.
STANDARD OF REVIEW	Appellate review was precluded by a valid appeal waiver as to certain claims; the facial constitutional challenge was reviewed for preservation, and the court declined interest-of-justice review.
PRECEDENTIAL VALUE	Published appellate decision; uncorrected and subject to revision before publication in the Official Reports.
PARTIES	Luis Rivera v. The People of the State of New York

TOPICS

appellate procedure

criminal procedure

speedy trial

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constitutional law

PRACTICE AREAS

criminal procedure

appellate procedure

constitutional law

sentencing

QUESTIONS PRESENTED

1. Whether Rivera knowingly, voluntarily, and intelligently waived his right to appeal.
2. Whether the valid appeal waiver precluded appellate review of the denial of Rivera's statutory speedy-trial motion and his constitutional challenge to his adjudication as a second felony offender in light of *Erlinger v. United States*.
3. Whether the appeal waiver precluded Rivera's facial constitutional challenge to New York's predicate felony offender statutes.
4. Whether Rivera's facial constitutional challenge was preserved for appellate review and whether the court should review it in the interest of justice.

HOLDINGS

1. Rivera knowingly, voluntarily, and intelligently waived his right to appeal, and the valid waiver precluded appellate review of his statutory speedy-trial challenge and his challenge to his second-felony-offender adjudication.
2. A facial constitutional challenge to New York's predicate felony offender statutes is not precluded by a valid appeal waiver, but Rivera's challenge was unpreserved because he failed to raise it before the Supreme Court, and the court declined to review it in the interest of justice.

KEY QUOTATIONS

“The record demonstrates that the defendant knowingly, voluntarily, and intelligently waived his right to appeal” ([*1])

“However, that contention is unpreserved for appellate review, as the defendant failed to raise it before the Supreme Court” ([*1])

FACTUAL BACKGROUND

Rivera pleaded guilty to robbery in the third degree. The Supreme Court, Kings County, adjudicated him a second felony offender and imposed sentence in a judgment rendered August 1, 2023. On appeal, he challenged the denial of his statutory speedy-trial motion and the constitutionality of his second-felony-offender adjudication and New York's predicate felony offender statutes.

PROCEDURAL HISTORY

Rivera pleaded guilty to robbery in the third degree in the Supreme Court, Kings County, and was sentenced in a judgment rendered August 1, 2023. He appealed, challenging the denial of his statutory speedy-trial motion, his adjudication as a second felony offender, and the constitutionality of New York's predicate felony offender

statutes. The Appellate Division affirmed, holding that the appeal waiver barred review of the first two claims and that the facial constitutional challenge was unpreserved and would not be reviewed in the interest of justice.

DISPOSITION

affirmed

CASES CITED

- People v. Thomas, 34 NY3d 545, 558-564
- People v. Walker, 245 AD3d 740, 741
- People v. Smith, 237 AD3d 1111
- Erlinger v. United States, 602 U.S. 821
- People v. Mejia, 246 AD3d 828, 829
- People v. Swain, 245 AD3d 740
- People v. Mejia, 246 AD3d at 830
- People v. Smith, 244 AD3d 1144

OPINION

People v. Rivera 2026 NY Slip Op 03188

PER CURIAM.

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1111) and his contention that his adjudication as a second felony offender was unconstitutional in light of *Erlinger v United States* (602 US 821) (see *People v Mejia* , 246 AD3d 828 , 829; *People v Swain* , 245 AD3d 740). To the extent that the defendant contends that New York's predicate felony offender statutes are facially unconstitutional, that contention is not precluded by the appeal waiver (see *People v Mejia* , 246 AD3d at 830; *People v Smith* , 244 AD3d 1144). However, that contention is unpreserved for appellate review, as the defendant failed to raise it before the Supreme Court (see CPL 470.05[2]), and we decline to review it in the exercise of our interest of justice jurisdiction (see *People v Mejia* , 246 AD3d at 830; *People v Smith* , 244 AD3d 1144).

IANNACCI, J.P., BRATHWAITE NELSON, LANDICINO and GOLDBERG VELAZQUEZ, JJ., concur.

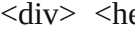
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PER CURIAM.

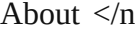
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May 20, 2026

Appellate Division, Second Department

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The People of the State of New York, respondent,

v

Luis Rivera, appellant.

Supreme Court of the State of New York, Appellate Division, Second Judicial Department

Decided on May 20, 2026

2023-07318, (Ind. No. 74348/21)

Angela G. Iannacci, J.P.

Valerie Brathwaite Nelson

Carl J. Landicino

Elena Goldberg Velazquez, JJ.

Patricia Pazner, New York, NY (Sean H. Murray of counsel), for appellant.

Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove, Julian Joiris, and Shlomit Heering of counsel), for respondent.

DECISION & ORDER

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Dineen Riviezzo, J., at plea; Donald Leo, J., at sentence), rendered August 1, 2023, convicting him of robbery in the third degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The record demonstrates that the defendant

knowingly, voluntarily, and intelligently waived his right to appeal (*see* *People v Thomas*, 34 NY3d 545, 558-564; *People v Walker*, 245 AD3d 740, 741). The defendant's valid waiver of his right to appeal precludes appellate review of his challenge to the denial of his statutory speedy trial motion (*see People v Walker*, 245 AD3d at 741; *People v Smith*, 237 AD3d 1111) and his contention that his adjudication as a second felony offender was unconstitutional in light of *Erlinger v United States* (602 US 821) (*see* *People v Mejia*, 246 AD3d 828, 829; *People v Swain*, 245 AD3d 740). To the extent that the defendant contends that New York's predicate felony offender statutes are facially unconstitutional, that contention is not precluded by the appeal waiver (*see* *People v Mejia*, 246 AD3d at 830; *People v Smith*, 244 AD3d 1144). However, that contention is unpreserved for appellate review, as the defendant failed to raise it before the Supreme Court (*see* CPL 470.05[2]), and we decline to review it in the exercise of our interest of justice jurisdiction (*see* *People v Mejia*, 246 AD3d at 830; *People v Smith*, 244 AD3d 1144).

IANNACCI, J.P., BRATHWAITE NELSON, LANDICINO
and GOLDBERG VELAZQUEZ, JJ., concur.

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