

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

People v. Rosavong

2026 NY Slip Op 00096 (App. Div. 1st Dep't Jan. 13 2026) · No. Ind. No. 72973/23; Appeal No. 5560; Case No. 2024-05031 · Decided January 13, 2026

SUMMARY

The New York Appellate Division, First Department modified Anthony Rosavong's judgment by striking the probation condition requiring payment of a surcharge and fees, and otherwise affirmed his conviction and sentence. The court rejected or declined to reach challenges concerning New York's firearm licensing scheme, the statutory good-moral-character requirement, and other probation conditions.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Kern, J.P.; Kennedy, J.; Higgitt, J.; O'Neill Levy, J.; Chan, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	January 13, 2026
DOCKET	Ind. No. 72973/23; Appeal No. 5560; Case No. 2024-05031
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Supreme Court, Bronx County, convicting him upon his guilty plea of criminal possession of a weapon in the fourth degree and sentencing him to three years of probation.
STANDARD OF REVIEW	Questions of law were reviewed as matters of law; the court also exercised discretion in the interest of justice and reviewed probation conditions for whether they were reasonably related to rehabilitation or necessary to promote a law-abiding life.
PRECEDENTIAL VALUE	Published intermediate appellate decision
PARTIES	Anthony Rosavong v. The People of the State of New York

TOPICS

criminal procedure

probation

second amendment

appellate procedure

preservation of error

PRACTICE AREAS

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Second Amendment

QUESTIONS PRESENTED

1. Whether defendant's valid waiver of the right to appeal foreclosed review of his excessive-sentence claim.
2. Whether defendant's appeal waiver barred review of his Second Amendment challenge to New York's firearm licensing scheme and whether he had standing despite never applying for a firearm license.
3. Whether defendant established that the indictment was unconstitutional under *New York State Rifle & Pistol Assn., Inc. v. Bruen*.
4. Whether defendant's challenge to New York's good-moral-character licensing provision was preserved and meritorious.
5. Whether counsel was ineffective for failing to challenge the good-moral-character provision.
6. Whether the challenged probation conditions were reasonably related to rehabilitation or necessary to ensure that defendant would lead a law-abiding life.
7. Whether the condition requiring payment of the mandatory surcharge and fees should be stricken.

HOLDINGS

1. Defendant's valid waiver of his right to appeal foreclosed review of his excessive-sentence claim.
2. The appeal waiver did not foreclose defendant's Second Amendment claim, and defendant had standing to challenge New York's firearm licensing scheme even though he had never applied for a firearm license.
3. Defendant failed to establish that the indictment was unconstitutional under *New York State Rifle & Pistol Assn., Inc. v. Bruen*.
4. Defendant's challenge to Penal Law § 400.00(1)(b)'s good-moral-character provision was unpreserved, and the court declined to review it in the interest of justice; alternatively, the challenge was unavailing.
5. Defendant was not deprived of the effective assistance of counsel by counsel's failure to challenge the good-moral-character provision.
6. Challenges to probation conditions as not reasonably related to rehabilitation survived defendant's valid appeal waiver and did not require preservation. Conditions requiring defendant to avoid injurious or vicious habits, unlawful or disreputable places, and disreputable people, as well as conditions concerning drug or alcohol testing or treatment, were properly imposed.
7. Defendant's valid appeal waiver foreclosed review of his as-applied challenge to Condition No. 7 under the First, Fifth, and Fourteenth Amendments; in any event, the claim was unpreserved and was not reviewed in the interest of justice.

8. The probation condition requiring payment of the mandatory surcharge and other fees had to be stricken because it was not reasonably related to defendant's rehabilitation or necessary to ensure that he would lead a law-abiding life.

KEY QUOTATIONS

*“Defendant validly waived his right to appeal, which forecloses review of his excessive sentence claim” (*1)*

*“The condition of defendant's probation requiring that he pay the mandatory surcharge and other fees should be stricken as it is not reasonably related to defendant's rehabilitation, or necessary to ensure that he will lead a law-abiding life” (*1)*

FACTUAL BACKGROUND

Defendant pleaded guilty to criminal possession of a weapon in the fourth degree after being found in possession of a loaded pistol with a defaced serial number. The record also reflected prior use of alcohol and marijuana, association with what defendant described as the wrong crowd, and former gang membership. The sentencing court imposed three years of probation, including conditions concerning disreputable places and associations, drug or alcohol testing or treatment, and payment of a mandatory surcharge and fees.

PROCEDURAL HISTORY

The Supreme Court, Bronx County, denied or did not grant defendant's challenge to the indictment, accepted his guilty plea, and rendered judgment on August 1, 2024. On appeal, the First Department held that defendant's valid appeal waiver foreclosed review of his excessive-sentence claim and certain constitutional claims, upheld most probation conditions, and modified the judgment by striking the surcharge and fee condition.

DISPOSITION

affirmed

CASES CITED

- People v. Thomas, 34 NY3d 545 (2019), cert denied, 589 US —, 140 S. Ct. 2634 (2020)
- People v. Nunez, 220 AD3d 597, 597 (1st Dept 2023), lv denied 41 NY3d 1004 (2024)
- People v. Johnson, 2025 NY Slip Op 06528, *2 (2025)
- New York State Rifle & Pistol Assn., Inc. v. Bruen, 597 US 1 (2022)
- People v. Cabrera, 41 NY3d 35, 42-51 (2023)
- Antonyuk v. James, 120 F4th 941, 981 (2d Cir 2024), cert denied, 145 S. Ct. 1900 (2025)
- People v. Caban, 5 NY3d 143, 152 (2005)
- People v. Alvarez, 233 AD3d 619, 620 (1st Dept 2024), lv denied 43 NY3d 961 (2025)
- People v. Arias, 210 AD3d 593, 594 (1st Dept 2022), lv denied 39 NY3d 1109 (2023)
- People v. Hakes, 32 NY3d 624, 628 n. 3 (2018)
- People v. Rivera, 242 AD3d 421 (1st Dept 2025)

- People v. Lowndes, 239 AD3d 574, 575 (1st Dept 2025), lv denied 44 NY3d 1012 (2025)
- People v. Hanley, 20 NY3d 601, 604 (2013)
- People v. Wood, 239 AD3d 484, 484-485 (1st Dept 2025)

OPINION

People v. Rosavong 2026 NY Slip Op 00096

PER CURIAM.

People v Rosavong (2026 NY Slip Op 00096) People v Rosavong 2026 NY Slip Op 00096
Decided on January 13, 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 13, 2026 Before: Kern, J.P. SEQ CHAPTER \h \r 1, Kennedy, Higgitt, O'Neill Levy, Chan, JJ. Ind. No. 72973/23|Appeal No. 5560|Case No. 2024-05031| [*1]The People of the State of New York, Respondent, v Anthony Rosavong, Appellant. Jenay Nurse Guilford, Center for Appellate Litigation, New York (Emilia King-Musza of counsel), for appellant. Darcel D. Clark, District Attorney, Bronx (Maria I. Wager of counsel), for respondent. Judgment, Supreme Court, Bronx County (Steven Hornstein, J. on motion to dismiss; Tara A. Collins, J. at plea and sentencing), rendered August 1, 2024, convicting defendant, upon his plea of guilty, of criminal possession of a weapon in the fourth degree, and sentencing him to three years of probation, unanimously modified, on the law and as a matter of discretion in the interest of justice, to the extent of striking the condition of probation requiring him to pay a surcharge and fees, and otherwise affirmed. Defendant validly waived his right to appeal (see People v Thomas, 34 NY3d 545 [2019], cert denied 589 US &mdash, 140 S Ct 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]). As an alternative holding, we perceive no basis for reducing the sentence. Defendant's valid waiver does not foreclose from review his Second Amendment claim, and he has standing to raise his challenge to the constitutionality of New York's firearm licensing scheme, notwithstanding that he never applied to obtain a firearm license (see People v Johnson , — NY3d &mdash, 2025 NY Slip Op 06528, *2 [2025]). However, defendant has failed to establish that the instant indictment is unconstitutional under New York State Rifle & Pistol Assn., Inc. v Bruen (597 US 1 [2022]; see e.g. Johnson , 2025 NY Slip Op 06528, at *2). To the extent that defendant challenges New York's "good moral character" provision (Penal Law § 400.00[1][b]), his arguments are unpreserved because he failed to raise them in his motion to dismiss the indictment (see People v Cabrera , 41 NY3d 35 , 42-51 [2023]), and we decline to entertain them in the interest of justice. As an alternative holding, we find them unavailing (see generally Antonyuk v James , 120 F4th 941 , 981 [2d Cir 2024], cert denied — US &mdash, 145 S Ct 1900 [2025]). To the extent the record allows review, because defendant's Bruen claim is unavailing, he was not deprived of the effective assistance of counsel by counsel's failure to

challenge the "good moral character" provision (see *People v Caban* , 5 NY3d 143, 152 [2005]). Defendant's challenge to certain conditions of his probation as not reasonably related to his rehabilitation survive his valid appeal waiver and do not require preservation (see *People v Alvarez* , 233 AD3d 619 , 620 [1st Dept 2024], lv denied 43 NY3d 961 [2025]; *People v Arias* , 210 AD3d 593, 594 [1st Dept 2022], lv denied 39 NY3d 1109 [2023]; see also *People v Hakes* , 32 NY3d 624, 628, n 3 [2018]). However, the condition of defendant's probation (Condition No. 7) requiring that he "[a]void injurious or vicious habits; refrain from frequenting unlawful or disreputable places; and . . . not consort with disreputable people" (based on Penal Law §§ 65.10[2][a], [b]) was providently imposed as reasonably necessary to ensure that defendant "will lead a law-abiding life or to assist him to do so" (Penal Law § 65.10[1]) given that defendant was found in possession of a loaded pistol with a defaced serial number, and he admitted prior use of alcohol and marijuana, association with "the wrong crowd," and former gang membership (see *People v Rivera* , 242 AD3d 421 [1st Dept 2025]; *People v Lowndes* , 239 AD3d 574 , 575 [1st Dept 2025], lv denied 44 NY3d 1012 [2025]). For these same reasons, the court providently imposed the two conditions of probation (Conditions Nos. 15 and 23) related to drug or alcohol testing or treatment. Defendant's valid appeal waiver forecloses review of his constitutional as-applied challenge to Condition No. 7 under the First, Fifth, and Fourteenth Amendments (see *Lowndes* , 239 AD3d at 575). In any event, this claim is unpreserved, and we decline to review it in the interest of justice (see *Cabrera* , 41 NY3d at 42-51; *Lowndes* , 239 AD3d at 575; see generally *People v Hanley* , 20 NY3d 601, 604 [2013]). The condition of defendant's probation requiring that he pay the mandatory surcharge and other fees should be stricken as it is not reasonably related to defendant's rehabilitation, or necessary to ensure that he will lead a law-abiding life (see *People v Wood* , 239 AD3d 484 , 484-485 [1st Dept 2025]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: January 13, 2026
PER CURIAM.

People v Rosavong (2026 NY Slip Op 00096) *People v Rosavong* 2026 NY Slip Op 00096
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Respondent, v Anthony Rosavong, Appellant. Jenay Nurse Guilford, Center for Appellate
Litigation, New York (Emilia King-Musza of counsel), for appellant. Darcel D. Clark, District
Attorney, Bronx (Maria I. Wager of counsel), for respondent. Judgment, Supreme Court, Bronx
County (Steven Hornstein, J. on motion to dismiss; Tara A. Collins, J. at plea and sentencing),
rendered August 1, 2024, convicting defendant, upon his plea of guilty, of criminal possession of a
weapon in the fourth degree, and sentencing him to three years of probation, unanimously

modified, on the law and as a matter of discretion in the interest of justice, to the extent of striking the condition of probation requiring him to pay a surcharge and fees, and otherwise affirmed. Defendant validly waived his right to appeal (see *People v Thomas*, 34 NY3d 545 [2019], cert denied 589 US &mdash, 140 S Ct 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]). As an alternative holding, we perceive no basis for reducing the sentence. Defendant's valid waiver does not foreclose from review his Second Amendment claim, and he has standing to raise his challenge to the constitutionality of New York's firearm licensing scheme, notwithstanding that he never applied to obtain a firearm license (see *People v Johnson* , — NY3d &mdash, 2025 NY Slip Op 06528, *2 [2025]). However, defendant has failed to establish that the instant indictment is unconstitutional under New York State Rifle & Pistol Assn., Inc. v Bruen (597 US 1 [2022]; see e.g. *Johnson* , 2025 NY Slip Op 06528, at *2). To the extent that defendant challenges New York's "good moral character" provision (Penal Law § 400.00[1][b]), his arguments are unpreserved because he failed to raise them in his motion to dismiss the indictment (see *People v Cabrera* , 41 NY3d 35, 42-51 [2023]), and we decline to entertain them in the interest of justice. As an alternative holding, we find them unavailing (see generally *Antonyuk v James* , 120 F4th 941, 981 [2d Cir 2024], cert denied — US &mdash, 145 S Ct 1900 [2025]). To the extent the record allows review, because defendant's Bruen claim is unavailing, he was not deprived of the effective assistance of counsel by counsel's failure to challenge the "good moral character" provision (see *People v Caban* , 5 NY3d 143, 152 [2005]). Defendant's challenge to certain conditions of his probation as not reasonably related to his rehabilitation survive his valid appeal waiver and do not require preservation (see *People v Alvarez* , 233 AD3d 619, 620 [1st Dept 2024], lv denied 43 NY3d 961 [2025]; *People v Arias* , 210 AD3d 593, 594 [1st Dept 2022], lv denied 39 NY3d 1109 [2023]; see also *People v Hakes* , 32 NY3d 624, 628, n 3 [2018]). However, the condition of defendant's probation (Condition No. 7) requiring that he "[a]void injurious or vicious habits; refrain from frequenting unlawful or disreputable places; and . . . not consort with disreputable people" (based on Penal Law §§ 65.10[2][a], [b]) was providently imposed as reasonably necessary to ensure that defendant "will lead a law-abiding life or to assist him to do so" (Penal Law § 65.10[1]) given that defendant was found in possession of a loaded pistol with a defaced serial number, and he admitted prior use of alcohol and marijuana, association with "the wrong crowd," and former gang membership (see *People v Rivera* , 242 AD3d 421 [1st Dept 2025]; *People v Lowndes* , 239 AD3d 574, 575 [1st Dept 2025], lv denied 44 NY3d 1012 [2025]). For these same reasons, the court providently imposed the two conditions of probation (Conditions Nos. 15 and 23) related to drug or alcohol testing or treatment. Defendant's valid appeal waiver forecloses review of his constitutional as-applied challenge to Condition No. 7 under the First, Fifth, and Fourteenth Amendments (see *Lowndes* , 239 AD3d at 575). In any event, this claim is unpreserved, and we decline to review it in the interest of justice (see *Cabrera* , 41 NY3d at 42-51; *Lowndes* , 239 AD3d at 575; see

generally *People v Hanley* , 20 NY3d 601, 604 [2013]). The condition of defendant's probation requiring that he pay the mandatory surcharge and other fees should be stricken as it is not reasonably related to defendant's rehabilitation, or necessary to ensure that he will lead a law-abiding life (see *People v Wood* , 239 AD3d 484, 484-485 [1st Dept 2025]).THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: January 13, 2026

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