

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

People v. Castro

2026 NY Slip Op 01216 · No. 2022-05452 · Decided March 4, 2026

SUMMARY

The Appellate Division, Second Department affirmed Ruben Castro's judgment of conviction for assault in the second degree following his guilty plea and sentencing as a persistent violent felony offender. The court held that his constitutional challenge based on *Erlinger v. United States* was unpreserved because it was not raised before the trial court and declined to review it 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	Valerie Brathwaite Nelson, J.P.; Lillian Wan, J.; Laurence L. Love, J.; Elena Goldberg Velazquez, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	March 4, 2026
DOCKET	2022-05452
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment convicting him, upon his guilty plea, of assault in the second degree and sentencing him as a persistent violent felony offender.
STANDARD OF REVIEW	Constitutional challenge not preserved under CPL 470.05(2); appellate court declined discretionary interest-of-justice review.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Ruben Castro v. The People of the State of New York

TOPICS

- sentencing
- preservation of error
- appellate procedure
- criminal procedure
- constitutional law

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

sentencing

QUESTIONS PRESENTED

1. Whether defendant's constitutional challenge to New York's persistent violent felony offender sentencing regime and to his sentence was preserved for appellate review.
2. Whether the Appellate Division should review the unpreserved constitutional challenge in the interest of justice.

HOLDINGS

1. Defendant's contention that *Erlinger v. United States* rendered the persistent violent felony offender sentencing regime unconstitutional, and that his sentence was unconstitutional in light of *Erlinger*, was unpreserved because he failed to raise the constitutional challenge before the Supreme Court.
2. The court declined to review defendant's unpreserved constitutional challenge in the exercise of its interest-of-justice jurisdiction.

KEY QUOTATIONS

*“The defendant's contention that the United States Supreme Court's determination in Erlinger v United States (602 US 821) renders unconstitutional the persistent violent felony offender sentencing regime and that his sentence as a persistent violent felony offender (see Penal Law § 70.08) is unconstitutional in light of that determination is unpreserved for appellate review, as the defendant failed to raise a constitutional challenge before the Supreme Court” ([*1])*

FACTUAL BACKGROUND

Ruben Castro pleaded guilty to assault in the second degree in Supreme Court, Kings County. The court imposed sentence, treating him as a persistent violent felony offender under Penal Law § 70.08. On appeal, Castro challenged the constitutionality of that sentencing regime and his sentence based on *Erlinger v. United States*.

PROCEDURAL HISTORY

The Supreme Court, Kings County, rendered judgment on June 6, 2022, after defendant pleaded guilty to assault in the second degree and was sentenced. Defendant appealed, arguing that *Erlinger v. United States* rendered New York's persistent violent felony offender sentencing regime unconstitutional and that his sentence was unconstitutional. The Appellate Division affirmed, holding that the constitutional challenge was unpreserved and declining interest-of-justice review.

DISPOSITION

affirmed

CASES CITED

- Erlinger v. United States, 602 U.S. 821
- People v. Hernandez, 43 NY3d 591, 597

OPINION

PER CURIAM.

People v Castro (2026 NY Slip Op 01216) People v Castro 2026 NY Slip Op 01216 Decided on March 4, 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 March 4, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department VALERIE BRATHWAITE NELSON, J.P.

LILLIAN WAN LAURENCE L. LOVE ELENA GOLDBERG VELAZQUEZ, JJ. 2022-05452 (Ind. No. 1667/19) [*1]The People of the State of New York, respondent, v Ruben Castro, appellant. Patricia Pazner, New York, NY (Sean H. Murray of counsel), for appellant. Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove, Julian Joiris, and Allison Marculitis of counsel), for respondent.

DECISION & ORDER Appeal by the defendant from a judgment of the Supreme Court, Kings County (Phyllis Chu, J.), rendered June 6, 2022, convicting him of assault in the second degree, upon his plea of guilty, and imposing sentence. ORDERED that the judgment is affirmed.

The defendant's contention that the United States Supreme Court's determination in *Erlinger v United States* (602 US 821) renders unconstitutional the persistent violent felony offender sentencing regime and that his sentence as a persistent violent felony offender (see Penal Law § 70.08) is unconstitutional in light of that determination is unpreserved for appellate review, as the defendant failed to raise a constitutional challenge before the Supreme Court (see CPL 470.05[2]; *People v Hernandez*, 43 NY3d 591, 597).

We decline to review it in the exercise of our interest of justice jurisdiction. BRATHWAITE NELSON, J.P., WAN, LOVE and GOLDBERG VELAZQUEZ, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court