

**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.

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

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