

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

People v. Feliciano

2025 NY Slip Op 07313 (Appellate Division of the Supreme Court of the State of New York Second Judicial Department 2025) · No. 2023-08675 · Decided December 24, 2025

SUMMARY

The Appellate Division, Second Department affirmed Daniel Feliciano's judgment of conviction for criminal possession of stolen property in the fifth degree following his guilty plea. The court held that his challenge to mandatory surcharges and fees was unpreserved and declined to review it in the interest of justice, and it rejected his ineffective-assistance-of-counsel claim.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; William G. Ford, J.; Laurence L. Love, J.; James P. McCormack, J.
JURISDICTION	New York Supreme Court, Appellate Division, Second Department
DECIDED	December 24, 2025
DOCKET	2023-08675
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Supreme Court, Richmond County, entered after his guilty plea and sentencing, challenging the imposition of mandatory surcharge and fees and alleging ineffective assistance of counsel at sentencing.
STANDARD OF REVIEW	The surcharge-and-fee waiver claim was reviewed for preservation under New York's contemporaneous-objection rule; the ineffective-assistance claim was evaluated under the federal and state constitutional standards.
PRECEDENTIAL VALUE	Published New York appellate decision
PARTIES	Daniel Feliciano v. The People of the State of New York

TOPICS

ineffective assistance

sentencing

criminal procedure

preservation of error

appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

ineffective assistance of counsel

sentencing

QUESTIONS PRESENTED

1. Whether defendant's challenge to the mandatory surcharge and fees was preserved for appellate review.
2. Whether the Appellate Division should reach the unpreserved waiver issue in the interest of justice absent the People's consent.
3. Whether defense counsel's failure to request waiver of the mandatory surcharge and fees constituted ineffective assistance under the federal or New York constitutional standards.

HOLDINGS

1. Defendant's contention that the mandatory surcharge and fees should have been waived pursuant to CPL 420.35(2-a) was unpreserved for appellate review.
2. The court declined to reach the unpreserved waiver issue in the exercise of its interest-of-justice jurisdiction because the People did not consent.
3. Defendant failed to establish ineffective assistance of counsel under either the federal or New York constitutional standards.

KEY QUOTATIONS

*"The defendant failed "to demonstrate the absence of strategic or other legitimate explanations" for defense counsel's alleged shortcoming at the sentencing proceeding" (*1)*

FACTUAL BACKGROUND

Daniel Feliciano pleaded guilty to criminal possession of stolen property in the fifth degree. At sentencing, the court imposed the mandatory surcharge and fees authorized by Penal Law § 60.35(1)(a). On appeal, Feliciano argued that the surcharge and fees should have been waived and that counsel was ineffective for failing to request the waiver.

PROCEDURAL HISTORY

The Supreme Court, Richmond County, accepted defendant's guilty plea to criminal possession of stolen property in the fifth degree and imposed sentence in a judgment rendered July 12, 2022. Defendant appealed to the Appellate Division, Second Department. The Appellate Division affirmed, concluding that the surcharge-and-fee waiver claim was unpreserved and that the ineffective-assistance claim lacked merit.

DISPOSITION

affirmed

CASES CITED

- People v. Jawan Lee, 236 A.D.3d 924
- People v. Taj W., 235 A.D.3d 1016, 1016
- People v. Clarke, 2025 NY Slip Op 06070
- People v. Robinson, 176 A.D.3d 877
- People v. Rivera, 71 N.Y.2d 705, 709
- Strickland v. Washington, 466 U.S. 668
- People v. Benevento, 91 N.Y.2d 708, 714

OPINION

PER CURIAM.

People v Feliciano (2025 NY Slip Op 07313) People v Feliciano 2025 NY Slip Op 07313 Decided on December 24, 2025 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 December 24, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department MARK C. DILLON, J.P.

WILLIAM G. FORD LAURENCE L. LOVE JAMES P. MCCORMACK, JJ. 2023-08675 [*1]The People of the State of New York, respondent, v Daniel Feliciano, appellant. (S.C.I. No. 90249/19) Patricia Pazner, New York, NY (Elisabeth R. Calcaterra of counsel), for appellant. Michael E. McMahon, District Attorney, Staten Island, NY (Thomas B. Litsky and Nicole Kaye of counsel), for respondent.

DECISION & ORDER Appeal by the defendant from a judgment of the Supreme Court, Richmond County (Mario F. Mattei, J., at plea; Marina Cora Mundy, J., at sentence), rendered July 12, 2022, convicting him of criminal possession of stolen property in the fifth degree, upon his plea of guilty, and imposing sentence. ORDERED that the judgment is affirmed.

The defendant's contention that the mandatory surcharge and fees imposed at sentencing (see Penal Law § 60.35[1][a]) should be waived pursuant to CPL 420.35(2-a) is unpreserved for appellate review (see id. § 470.05[2]; People v Jawan Lee, 236 AD3d 924; People v Taj W., 235 AD3d 1016, 1016).

Under the circumstances, and in the absence of the People's consent, we decline to reach the issue in the exercise of our interest of justice jurisdiction (see People v Clarke, _____ AD3d _____, 2025 NY Slip Op 06070).

The defendant's contention that he was denied the effective assistance of counsel at sentencing based on defense counsel's failure to request that the mandatory surcharge and fees be waived is

without merit (see *People v Robinson*, 176 AD3d 877).

The defendant failed "to demonstrate the absence of strategic or other legitimate explanations" for defense counsel's alleged shortcoming at the sentencing proceeding (*People v Rivera*, 71 NY2d 705, 709). Under the circumstances, the defendant failed to establish that he received the ineffective assistance of counsel under either the federal or state constitutional standards (see generally *Strickland v Washington*, 466 US 668; *People v Benevento*, 91 NY2d 708, 714).

DILLON, J.P., FORD, LOVE and MCCORMACK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

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Under the circumstances, and in the absence of the People's consent, we decline to reach the issue in the exercise of our interest of justice jurisdiction (see *People v Clarke*, _____ AD3d _____, 2025 NY Slip Op 06070).

The defendant's contention that he was denied the effective assistance of counsel at sentencing based on defense counsel's failure to request that the mandatory surcharge and fees be waived is without merit (see *People v Robinson*, 176 AD3d 877).

The defendant failed "to demonstrate the absence of strategic or other legitimate explanations" for defense counsel's alleged shortcoming at the sentencing proceeding (People v Rivera, 71 NY2d 705, 709). Under the circumstances, the defendant failed to establish that he received the ineffective assistance of counsel under either the federal or state constitutional standards (see generally Strickland v Washington, 466 US 668; People v Benevento, 91 NY2d 708, 714).

DILLON, J.P., FORD, LOVE and MCCORMACK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court