

NEW YORK COURT OF APPEALS

People v. Sabb

2026 NY Slip Op 01590 · No. No. 25 · Decided March 19, 2026

SUMMARY

The New York Court of Appeals held that consecutive sentences imposed after a guilty plea were unlawful because the prosecution did not establish that the offenses arose from separate and distinct acts. The Court limited review to the allegations in the relevant indictment count and the defendant’s plea admissions, rejecting reliance on broader record materials such as the presentence report. The Court affirmed the Appellate Division’s order requiring the sentences to run concurrently.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Rivera, J.; Chief Judge Wilson; Judge Cannataro; Judge Troutman; Judge Halligan; Judge Rivera; Judge Singas; Judge Garcia
JURISDICTION	New York Court of Appeals
DECIDED	March 19, 2026
DOCKET	No. 25
DISPOSITION	affirmed
PROCEDURAL POSTURE	The People appealed, by leave of a dissenting Appellate Division justice, from an Appellate Division order modifying defendant's judgment to require concurrent sentences after defendant pleaded guilty and had received consecutive sentences.
STANDARD OF REVIEW	De novo review of the legality of consecutive sentences and whether the record establishes the separate and distinct acts required by Penal Law § 70.25 (2). The legality challenge was reviewable under the illegal-sentence exception to preservation.
PRECEDENTIAL VALUE	Published precedential opinion of the New York Court of Appeals
PARTIES	The People v. Jhajuan Sabb

TOPICS

- sentencing
- criminal procedure
- appellate procedure
- statutory interpretation
- preservation of error

PRACTICE AREAS

New York criminal sentencing

consecutive sentences

guilty pleas

appellate criminal procedure

statutory interpretation

QUESTIONS PRESENTED

1. Whether defendant's challenge to the legality of consecutive sentences was preserved despite his failure to object in Supreme Court and his agreement to consecutive sentences.
2. Whether the prosecution established, from the allegations in the pleaded indictment count and defendant's plea allocutions, that the manslaughter and attempted-assault offenses resulted from separate and distinct acts so as to permit consecutive sentences under Penal Law § 70.25 (2).
3. Whether an appellate court may consider the entire record, including a presentence report, grand jury minutes, and pretrial evidence, when reviewing the legality of consecutive sentences imposed after a guilty plea.

HOLDINGS

1. A defendant need not preserve a challenge to consecutive sentences when the claim is that the trial court exceeded its authority by imposing an illegal sentence readily discernible from the trial record. The defendant's agreement to consecutive sentences does not eliminate review under the illegal-sentence exception.
2. When the statutory actus reus elements overlap, consecutive sentences may be imposed only if the prosecution establishes that the acts or omissions underlying the offenses were separate and distinct. For a defendant who pleads guilty, the prosecution must establish that fact from the allegations in the pleaded indictment count and the facts admitted during the plea allocution; for a plea to a lesser offense, the prosecution may rely only on facts admitted during the allocution as to the lesser offense.
3. The appellate court may not expand the established sources of proof to consider all information available to the trial court, such as the presentence report, grand jury minutes, and pretrial testimony or exhibits, when determining the legality of consecutive sentences imposed after a guilty plea.

KEY QUOTATIONS

"The prosecution failed to meet its burden of establishing that Supreme Court could lawfully sentence defendant consecutively, because neither the allegations in the indictment on the count pleaded to nor defendant's admissions during his guilty plea allocutions showed that the two offenses were the result of separate and distinct acts, as required by law." ([*1])

"An appellate court reviewing the legality of consecutive sentencing "must first examine the statutory definitions of the crimes for which [the] defendant has been convicted" and compare the actus reus elements of each to determine if they are, "by definition, the same for both offenses . . . , or if the actus reus for one offense is . . . a material element of the second offense"" ([*3]-[*4])

"In sum, the trial court could not lawfully impose consecutive sentences in this case." ([*6])

FACTUAL BACKGROUND

Defendant participated with two others in a drive-by shooting that killed S.A. and injured A.T. and three other people. Defendant pleaded guilty to first-degree manslaughter for causing S.A.'s death and first-degree attempted assault concerning A.T. The plea allocutions and the attempted-assault indictment count did not establish that defendant fired separate shots at the two victims or that separate bullets caused their injuries, although Supreme Court imposed consecutive sentences.

PROCEDURAL HISTORY

Defendant was indicted on murder, attempted assault, and weapon-possession charges. He pleaded guilty to first-degree manslaughter, as a lesser included offense of murder, and first-degree attempted assault. Supreme Court imposed consecutive sentences totaling 35 years. The Appellate Division, Third Department, in a divided decision, modified the judgment to make the sentences concurrent. The Court of Appeals affirmed that order insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- People v. Nieves, 2 NY3d 310, 315 (2004)
- People v. Samms, 95 NY2d 52, 56 (2000)
- People v. Laureano, 87 NY2d 640, 642-646 (1996)
- People v. McKnight, 16 NY3d 43, 48-49 (2010)
- People v. Couser, 28 NY3d 368, 377 n.4 (2016)
- People v. Rosas, 8 NY3d 493, 496 (2007)
- People v. Day, 73 NY2d 208, 211-212 (1989)
- People v. Ramirez, 89 NY2d 444, 451 (1996)
- People v. Dean, 8 NY3d 929, 930-931 (2007)
- People v. Griffin, 7 NY2d 511, 515-517 (1960)
- People v. Brathwaite, 63 NY2d 839, 841, 843 (1984)
- People v. Battles, 16 NY3d 54, 59 (2010)
- People v. Pardy, 113 AD3d 1003, 1003 (3d Dept 2014)
- People v. Pena, 259 AD2d 394, 394-395 (1st Dept 1999)
- People v. Robinson, 178 AD3d 861, 862 (2d Dept 2019)
- People v. Quirk, 73 AD3d 1089, 1090 (2d Dept 2010)
- People v. Wright, 229 AD3d 1094, 1095 (4th Dept 2024)
- People v. Farrar, 52 NY2d 302, 305 (1981)
- Oregon v. Ice, 555 US 160, 163-164 & n.3 (2009)

- People v. Hicks, 98 NY2d 185, 189 (2002)
- People v. Aiss, 29 NY2d 403, 406 (1972)
- People v. Selikoff, 35 NY2d 227, 232-234, 238 (1974)
- People v. Breaux, 24 AD3d 261, 262 (1st Dept 2005)
- People v. O'Dell, 105 AD2d 987, 987 (3d Dept 1984)
- People v. Frederick, 45 NY2d 520, 525 (1978)
- People v. Konieczny, 2 NY3d 569, 572 (2004)
- People v. Hansen, 95 NY2d 227, 230 (2000)
- People v. Seaberg, 74 NY2d 1, 7 (1989)
- People v. Delorbe, 35 NY3d 112, 119 (2020)
- People v. Lopez, 71 NY2d 662, 665 (1988)
- People v. Bradshaw, 18 NY3d 257, 264 (2011)
- People v. Avery, 85 NY2d 503, 506 (1995)
- People v. Tiger, 32 NY3d 91, 101 (2018)
- People v. Clairborne, 29 NY2d 950, 951 (1972)
- People v. Johnson, 23 NY3d 973, 975 (2014)
- People v. Sanders, 25 NY3d 337, 338-340 (2015)
- People v. Moore, 71 NY2d 684 (1988)
- People v. Allen, 24 NY3d 441, 449 (2014)
- People v. Cabrera, 41 NY3d 35, 43 (2023)
- People v. Moon, 119 AD3d 1293, 1295 (3d Dept 2014)
- People v. Holmes, 92 AD3d 957, 957 (2d Dept 2012)
- Cruz v. Raymond, 2013 WL 5530641, *7, 2013 U.S. Dist. LEXIS 144069, *18-20 (E.D.N.Y. Sept. 30, 2013)