

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

People v. Burney

2026 NY Slip Op 04101 (4th Dep't 2026) · No. 465 KA 24-01368 · Decided June 26, 2026

SUMMARY

The Appellate Division, Fourth Department, reviewed a judgment convicting Khalil Burney upon his guilty plea to attempted criminal possession of a weapon in the second degree. Because the sentencing transcript reflected a twelve-year prison sentence while the certificate of conviction reflected a two-year sentence, the court vacated the sentence and remitted the matter for resentencing, affirming the judgment as modified.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Whalen, P.J.; Lindley, J.; Ogden, J.; Nowak, J.; DelConte, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
DECIDED	June 26, 2026
DOCKET	465 KA 24-01368
DISPOSITION	remanded
PROCEDURAL POSTURE	Defendant appealed from a judgment of Erie County Court entered after his guilty plea and conviction for attempted criminal possession of a weapon in the second degree.
PRECEDENTIAL VALUE	Published
PARTIES	Khalil Burney v. The People of the State of New York

TOPICS

- sentencing
- criminal procedure
- appellate procedure
- remedies
- appellate jurisdiction

PRACTICE AREAS

- criminal law
- criminal procedure
- sentencing
- appellate practice

QUESTIONS PRESENTED

1. Whether the discrepancy between the sentence pronounced in open court and the sentence reflected on the certificate of conviction required correction of the judgment.
2. Whether the sentence should be vacated and the matter remitted for resentencing.

HOLDINGS

1. A court has inherent power to correct its records when the correction concerns a clerical mistake or conforms the record to the truth; because the sentencing transcript and certificate of conviction reflected materially different sentences, the sentence had to be vacated and the matter remitted for resentencing.

KEY QUOTATIONS

*"It is well settled that courts have the " 'inherent power to correct their records, where the correction relates to mistakes, or errors, which may be termed clerical in their nature, or where it is made in order to conform the record to the truth' " " ([*1])*

FACTUAL BACKGROUND

Defendant pleaded guilty to attempted criminal possession of a weapon in the second degree under Penal Law §§ 110.00 and 265.03(3). At sentencing, County Court pronounced a prison sentence of twelve years, but the certificate of conviction reflected a two-year prison sentence.

PROCEDURAL HISTORY

Erie County Court convicted defendant upon his guilty plea and rendered judgment on February 10, 2023. On appeal, the Appellate Division found a discrepancy between the sentence pronounced in the sentencing transcript and the sentence recorded on the certificate of conviction, vacated the sentence, affirmed the judgment as modified, and remitted for resentencing.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The matter is remitted to Erie County Court for resentencing, and the judgment is modified by vacating the sentence. The judgment is otherwise affirmed.

CASES CITED

- People v Minaya, 54 NY2d 360, 364 [1981], cert denied 455 US 1024 [1982]
- People v Gammon, 19 NY3d 893, 895 [2012]
- People v Vanderbilt, 238 AD3d 1483, 1489-1490 [4th Dept 2025], lv denied 43 NY3d 1059 [2025]
- People v Kratz, 231 AD3d 1529, 1530 [4th Dept 2024], lv denied 42 NY3d 1053 [2024]

OPINION

PER CURIAM.

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This decision is uncorrected and subject to revision before publication in the Official Reports. THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, v KHALIL BURNEY, DEFENDANT-APPELLANT. (APPEAL NO. 2.) Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department Decided on June 26, 2026 465 KA 24-01368 Present: Whalen, P.J., Lindley, Ogden, Nowak, And Delconte, JJ. THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (KRISTIN E. MARKARIAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. KEANE, DISTRICT ATTORNEY, BUFFALO (HARMONY A. HEALY OF COUNSEL), FOR RESPONDENT. Appeal from a judgment of the Erie County Court (James F. Bargnesi, J.), rendered February 10, 2023. The judgment convicted defendant, upon his plea of guilty, of attempted criminal possession of a weapon in the second degree. [*1] It is hereby ORDERED that the judgment so appealed from is unanimously modified on the law by vacating the sentence and as modified the judgment is affirmed, and the matter is remitted to Erie County Court for resentencing.

Memorandum: Defendant appeals from a judgment convicting him, upon his guilty plea, of attempted criminal possession of a weapon in the second degree (Penal Law §§ 110.00, 265.03 [3]). We note at the outset that there is a discrepancy between the transcript of the sentencing proceeding, during which County Court pronounced a prison sentence of "twelve years," and the certificate of conviction, which reflects a two-year prison sentence.

It is well settled that courts have the " 'inherent power to correct their records, where the correction relates to mistakes, or errors, which may be termed clerical in their nature, or where it is made in order to conform the record to the truth' " (People v Minaya, 54 NY2d 360, 364 [1981], cert denied 455 US 1024 [1982]; see People v Gammon, 19 NY3d 893, 895 [2012]).

We therefore modify the judgment by vacating the sentence, and we remit the matter to County Court for resentencing (see People v Vanderbilt, 238 AD3d 1483, 1489-1490 [4th Dept 2025], lv denied 43 NY3d 1059 [2025]; People v Kratz, 231 AD3d 1529, 1530 [4th Dept 2024], lv denied 42 NY3d 1053 [2024]).

In light of our determination, defendant's contentions are academic. Entered: June 26, 2026 Ann Dillon Flynn Clerk of the Court Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.

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