

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

People v. Powell

2025 NY Slip Op 06871 (N.Y. Ct. App. 2025) · No. 2023-00738 · Decided December 10, 2025

SUMMARY

The New York Appellate Division, Second Department, affirmed Zhamir Powell's resentence following his guilty plea to attempted murder in the second degree. The court upheld the denial of youthful offender status, found the resentence not excessive, and held that an updated presentence investigation report was not required before resentencing.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Hector D. LaSalle, P.J.; William G. Ford, J.; Helen Voutsinas, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	December 10, 2025
DOCKET	2023-00738
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a resentence imposed after remittitur for resentencing following his guilty-plea conviction of attempted murder in the second degree.
STANDARD OF REVIEW	Abuse-of-discretion review; the court assessed whether the Supreme Court providently exercised its discretion in denying youthful offender status and whether it improvidently resented defendant without an updated presentence investigation report.
PRECEDENTIAL VALUE	Published
PARTIES	Zhamir Powell v. The People of the State of New York

TOPICS

- sentencing
- criminal procedure
- appellate procedure
- standard of review

PRACTICE AREAS

criminal law

criminal sentencing

appellate practice

QUESTIONS PRESENTED

1. Whether the Supreme Court providently exercised its discretion in denying defendant youthful offender status.
2. Whether the resentence imposed was excessive.
3. Whether the Supreme Court was required to order an updated presentence investigation report before resentencing defendant.

HOLDINGS

1. The Supreme Court providently exercised its discretion in denying defendant youthful offender status.
2. The resentence imposed was not excessive.
3. The Supreme Court did not improvidently exercise its discretion by resentencing defendant without first ordering an updated presentence investigation report.

KEY QUOTATIONS

“The determination of whether to grant or deny youthful offender status rests within the sound discretion of the court and depends upon all the attending facts and circumstances of the case” ([*1])

“In making such a determination, factors to be considered by the court include 'the gravity of the crime and the manner in which it was committed, mitigating circumstances, defendant's prior criminal record, prior acts of violence, recommendations in the presentence reports, the level of cooperation with authorities, defendant's attitude toward society and respect for the law, and the prospects for rehabilitation and hope for a future constructive life'” ([*1])

FACTUAL BACKGROUND

Powell pleaded guilty to attempted murder in the second degree and was later resentenced after remittitur from the Appellate Division. At resentencing, the Supreme Court denied youthful offender status and imposed a resentence. Powell had remained continuously incarcerated between the initial sentencing and resentencing and was given an opportunity to provide the court with additional sentencing information.

PROCEDURAL HISTORY

The Supreme Court, Kings County, resentenced Powell on December 2, 2022, after this Court remitted the matter for resentencing. The Appellate Division reviewed the denial of youthful offender status, the excessiveness of the resentence, and the absence of an updated presentence investigation report, and affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Powell, 208 AD3d 1366
- People v. Dixon, 233 AD3d 1026, 1027
- People v. Tyjhe H., 221 AD3d 731, 731
- People v. Cruickshank, 105 AD2d 325, 334
- People v. Bunch, 224 AD3d 924, 925
- People v. Minaya, 164 AD3d 836, 836
- People v. Suitte, 90 AD2d 80
- People v. Kuey, 83 NY2d 278, 282-283
- People v. McGhee, 111 AD3d 961, 961

OPINION

PER CURIAM.

People v Powell (2025 NY Slip Op 06871) People v Powell 2025 NY Slip Op 06871 Decided on December 10, 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 10, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department HECTOR D. LASALLE, P.J. WILLIAM G. FORD HELEN VOUTSINAS JAMES P. MCCORMACK, JJ. 2023-00738 (Ind.

No. 6992/18) [*1]The People of the State of New York, respondent, v Zhamir Powell, appellant. Patricia Pazner, New York, NY (David Fitzmaurice and Wilmer Cutler Pickering Hale and Dorr LLP [Michael G. Bongiorno and Denis R. Hurley], of counsel), for appellant. Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove, Morgan J. Dennehy, and Shlomit Heering of counsel), for respondent.

DECISION & ORDER Appeal by the defendant from a resentence of the Supreme Court, Kings County (Matthew Sciarrino, J.), imposed December 2, 2022, upon his conviction of attempted murder in the second degree, upon his plea of guilty, after remittitur from this Court for resentencing (see People v Powell, 208 AD3d 1366). ORDERED that the resentence is affirmed.

"The determination of whether to grant or deny youthful offender status rests within the sound discretion of the court and depends upon all the attending facts and circumstances of the case" (People v Dixon, 233 AD3d 1026, 1027 [internal quotation marks omitted]). "In making such a determination, factors to be considered by the court include 'the gravity of the crime and the manner in which it was committed, mitigating circumstances, defendant's prior criminal record, prior acts of violence, recommendations in the presentence reports, the level of cooperation with authorities, defendant's attitude toward society and respect for the law, and the prospects for

rehabilitation and hope for a future constructive life" (People v Tyjhe H., 221 AD3d 731, 731, quoting People v Cruickshank, 105 AD2d 325, 334).

Here, the Supreme Court providently exercised its discretion in denying the defendant youthful offender status (see CPL 720.20[1]; People v Bunch, 224 AD3d 924, 925; People v Minaya, 164 AD3d 836, 836). The resentence imposed was not excessive (see People v Suitte, 90 AD2d 80).

The Supreme Court did not improvidently exercise its discretion in resentencing the defendant without first ordering an updated presentence investigation report, since he had been continually incarcerated between the initial sentencing and resentencing, and he was afforded the opportunity to provide the court with additional information relevant to sentencing (see People v Kuey, 83 NY2d 278, 282-283; People v McGhee, 111 AD3d 961, 961).

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

PER CURIAM.

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"The determination of whether to grant or deny youthful offender status rests within the sound discretion of the court and depends upon all the attending facts and circumstances of the case" (People v Dixon, 233 AD3d 1026, 1027 [internal quotation marks omitted]). "In making such a determination, factors to be considered by the court include 'the gravity of the crime and the manner in which it was committed, mitigating circumstances, defendant's prior criminal record,

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Here, the Supreme Court providently exercised its discretion in denying the defendant youthful offender status (see CPL 720.20[1]; *People v Bunch*, 224 AD3d 924, 925; *People v Minaya*, 164 AD3d 836, 836). The resentence imposed was not excessive (see *People v Suite*, 90 AD2d 80).

The Supreme Court did not improvidently exercise its discretion in resentencing the defendant without first ordering an updated presentence investigation report, since he had been continually incarcerated between the initial sentencing and resentencing, and he was afforded the opportunity to provide the court with additional information relevant to sentencing (see *People v Kuey*, 83 NY2d 278, 282-283; *People v McGhee*, 111 AD3d 961, 961).

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