

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

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