

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

People v. Pacha

2026 NY Slip Op 00982 · No. Ind No. 73890/23; Appeal No. 5857; Case No. 2024-06990 · Decided February 19, 2026

SUMMARY

The Appellate Division, First Department modified a judgment convicting Elvin Pacha of criminal possession of a controlled substance in the third degree and sentencing him to three years of probation. The court struck probation conditions requiring payment of the mandatory surcharge and associated fees and restricting gang-related attire and associations, while otherwise affirming the judgment.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Webber, J.P.; Kapnick, J.; Gesmer, J.; Shulman, J.; Michael, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	February 19, 2026
DOCKET	Ind No. 73890/23; Appeal No. 5857; Case No. 2024-06990
DISPOSITION	other
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Supreme Court, New York County, rendered after his guilty plea and sentencing him to three years of probation.
STANDARD OF REVIEW	The court reviewed the legality and relationship of probation conditions to rehabilitation and the requirement that the defendant lead a law-abiding life. It also applied waiver and preservation principles to the excessive-sentence and constitutional claims.
PRECEDENTIAL VALUE	Published intermediate appellate opinion
PARTIES	Elvin Pacha, also known as Elvin Fernandez, Defendant-Appellant v. The People of the State of New York, Respondent

TOPICS

- probation
- sentencing
- criminal procedure
- appellate procedure
- preservation of error

PRACTICE AREAS

criminal law

criminal procedure

sentencing and probation

appellate practice

QUESTIONS PRESENTED

1. Whether defendant's valid waiver of the right to appeal foreclosed review of his excessive-sentence claim.
2. Whether challenges to probation conditions as unrelated to rehabilitation survived defendant's appeal waiver and were subject to a preservation requirement.
3. Whether the condition requiring defendant to avoid injurious or vicious habits, unlawful or disreputable places, and disreputable people was reasonably related to rehabilitation.
4. Whether the condition prohibiting possession or purchase of a firearm was properly designed to ensure that defendant would lead a law-abiding life.
5. Whether the conditions requiring payment of charges and fees and imposing gang-related restrictions were reasonably related to rehabilitation or necessary to ensure that defendant led a law-abiding life.
6. Whether defendant's constitutional challenge to one probation condition was preserved and whether his challenge to the gang-related condition was ripe for review.

HOLDINGS

1. A valid waiver of the right to appeal foreclosed review of defendant's excessive-sentence claim.
2. A defendant's challenge to probation conditions as unrelated to rehabilitation survives a waiver of the right to appeal and does not require preservation.
3. The condition requiring defendant to avoid injurious or vicious habits, unlawful or disreputable places, and disreputable people was properly imposed because it was related to rehabilitation from a conviction involving an alleged drug sale with accomplices.
4. Defendant's constitutional challenge to condition seven was unpreserved, and the court declined to review it in the interest of justice; alternatively, the constitutional claim was unavailing.
5. The condition prohibiting defendant from possessing or purchasing a firearm was properly designed to help ensure that he would lead a law-abiding life.
6. The condition requiring defendant to pay charges and fees associated with his conviction was not reasonably related to rehabilitation or necessary to ensure that he led a law-abiding life and therefore had to be stricken.
7. The gang-related condition was not reasonably related to defendant's rehabilitation or necessary to ensure that he led a law-abiding life and had to be stricken.
8. Defendant's challenge to the gang-related condition was ripe for review.

KEY QUOTATIONS

*"However, conditions 10 and 24 of defendant's probation should be stricken as not reasonably related to his rehabilitation or necessary to ensure he leads a law-abiding life (Penal Law § 65.10 [1])." ([*1])*

“Additionally, condition 24, which concerns gang affiliation, is not related to defendant's rehabilitation as there is no evidence that defendant's crime was connected to any gang activities or that he has any history of gang membership or gang affiliation”” ([*1])

FACTUAL BACKGROUND

Defendant pleaded guilty to criminal possession of a controlled substance in the third degree in a case stemming from an alleged drug sale involving accomplices. He was sentenced to three years of probation subject to multiple conditions, including conditions concerning payment of charges and fees, firearm possession, disreputable places and associates, and gang-related conduct. The record contained no evidence that the crime was connected to gang activity or that defendant had a history of gang membership or affiliation.

PROCEDURAL HISTORY

The Supreme Court, New York County, convicted defendant upon his plea of guilty to criminal possession of a controlled substance in the third degree and sentenced him to three years of probation. The Appellate Division held that defendant's valid waiver of the right to appeal foreclosed review of his excessive-sentence claim, but reviewed his challenges to probation conditions and modified the judgment by striking conditions requiring payment of the mandatory surcharge and associated fees and imposing a gang-related condition. The judgment was otherwise affirmed.

DISPOSITION

other

CASES CITED

- People v. Thomas, 34 NY3d 545, 559 (2019), cert. denied, 589 U.S. — (2020)
- People v. Lowndes, 239 AD3d 574, 575 (1st Dept. 2025), lv. denied, 44 NY3d 1012 (2025)
- People v. Vasquetelles, 241 AD3d 1208, 1209 (1st Dept. 2025), lv. denied, — NY3d — (2025)
- People v. Carrasquillo, 242 AD3d 424, 425 (1st Dept. 2025)
- People v. Alvarez, 233 AD3d 619, 620 (1st Dept. 2024), lv. denied, 43 NY3d 961 (2025)
- People v. Percy, 234 AD3d 619, 620 (1st Dept. 2025)
- People v. Holguin, 243 AD3d 419, 420 (1st Dept. 2025)

OPINION

People v. Pacha 2026 NY Slip Op 00982

PER CURIAM.

People v Pacha (2026 NY Slip Op 00982) People v Pacha 2026 NY Slip Op 00982 Decided on February 19, 2026 Appellate Division, First 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 and Entered: February 19, 2026 Before: Webber, J.P., Kapnick, Gesmer, Shulman, Michael, JJ. Ind No. 73890/23|Appeal No.

5857|Case No. 2024-06990| [*1]The People of the State of New York, Respondent, v Elvin Pacha Also Known as Elvin Fernandez, Defendant-Appellant. Jenay Nurse Guilford, Center for Appellate Litigation, New York (Emilia King-Musza of counsel), for appellant. Alvin L. Bragg, Jr., District Attorney, New York (Nathan Morgante of counsel), for respondent. Judgment, Supreme Court, New York County (Robert M. Mandelbaum, J.), rendered November 14, 2024, convicting defendant, upon his plea of guilty, of criminal possession of a controlled substance in the third degree, and sentencing him to three years of probation, unanimously modified, on the law, to the extent of striking the conditions of probation requiring him to pay the mandatory surcharge and associated fees and directing him to "refrain from wearing or displaying gang paraphernalia and having any association with a gang or members of a gang if directed by the Department of Probation," and otherwise affirmed. Defendant validly waived his right to appeal (see *People v Thomas* , 34 NY3d 545 , 559 [2019], cert denied 589 US — [2020]), which forecloses review of his excessive sentence claim (see *People v Lowndes* , 239 AD3d 574 , 575 [1st Dept 2025], lv denied 44 NY3d 1012 [2025]). In any event, we perceive no basis to reduce his sentence. Defendant's challenge to four conditions of his probation as unrelated to his rehabilitation survives his waiver of the right to appeal and does not require preservation (see *id.*). Condition seven, which requires defendant to "avoid injurious or vicious habits; refrain from frequenting unlawful or disreputable places; and [t]o not consort with disreputable people," was properly imposed as it is related to defendant's rehabilitation from a conviction stemming from an alleged drug sale involving accomplices (see *People v Vasquetelles* , 241 AD3d 1208 , 1209 [1st Dept 2025], lv denied — NY3d — [2025]). Defendant's constitutional challenge to condition seven is unpreserved (see *Lowndes* , 239 AD3d at 575), and we decline to review it in the interest of justice. As an alternative holding, we find the constitutional claim to be unavailing (see *People v Carrasquillo* , 242 AD3d 424 , 425 [1st Dept 2025]). Condition 11, which admonishes defendant to "not possess or purchase a firearm," is properly designed to help "ensure that he will lead a law-abiding life" (*People v Alvarez* , 233 AD3d 619 , 620 [1st Dept 2024], lv denied 43 NY3d 961 [2025]) since he is not eligible to possess or purchase a firearm under both federal and state law (see 18 USC § 922 [g][1]; Penal Law § 400.00[1][c]). However, conditions 10 and 24 of defendant's probation should be stricken as not reasonably related to his rehabilitation or necessary to ensure he leads a law-abiding life (Penal Law § 65.10 [1]). Condition 10, which requires defendant to pay charges and fees associated with his conviction, will not help to ensure that he leads a law-abiding life and is not reasonably related to his rehabilitation (see *People v Percy* , 234 AD3d 619 , 620 [1st Dept 2025]). We note that the People do not oppose this relief. Additionally, condition 24, which concerns gang affiliation, is not related to defendant's rehabilitation as "there is no evidence that defendant's crime was connected to any gang activities or that he has any history of gang membership or gang affiliation" (*People v Holguin* , 243 AD3d 419 , 420 [1st Dept 2025]). We are not persuaded by the People's contention that defendant's position with respect to condition 24 is not ripe for review. THIS CONSTITUTES THE

DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: February 19, 2026

PER CURIAM.

People v Pacha (2026 NY Slip Op 00982) People v Pacha 2026 NY Slip Op 00982 Decided on February 19, 2026 Appellate Division, First 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 and Entered: February 19, 2026 Before: Webber, J.P., Kapnick, Gesmer, Shulman, Michael, JJ. Ind No. 73890/23|Appeal No. 5857|Case No. 2024-06990| [*1]The People of the State of New York, Respondent, v Elvin Pacha Also Known as Elvin Fernandez, Defendant-Appellant. Jenay Nurse Guilford, Center for Appellate Litigation, New York (Emilia King-Musza of counsel), for appellant. Alvin L. Bragg, Jr., District Attorney, New York (Nathan Morgante of counsel), for respondent. Judgment, Supreme Court, New York County (Robert M. Mandelbaum, J.), rendered November 14, 2024, convicting defendant, upon his plea of guilty, of criminal possession of a controlled substance in the third degree, and sentencing him to three years of probation, unanimously modified, on the law, to the extent of striking the conditions of probation requiring him to pay the mandatory surcharge and associated fees and directing him to "refrain from wearing or displaying gang paraphernalia and having any association with a gang or members of a gang if directed by the Department of Probation," and otherwise affirmed. Defendant validly waived his right to appeal (see People v Thomas , 34 NY3d 545, 559 [2019], cert denied 589 US — [2020]), which forecloses review of his excessive sentence claim (see People v Lowndes , 239 AD3d 574, 575 [1st Dept 2025], lv denied 44 NY3d 1012 [2025]). In any event, we perceive no basis to reduce his sentence. Defendant's challenge to four conditions of his probation as unrelated to his rehabilitation survives his waiver of the right to appeal and does not require preservation (see id.). Condition seven, which requires defendant to "avoid injurious or vicious habits; refrain from frequenting unlawful or disreputable places; and [t]o not consort with disreputable people," was properly imposed as it is related to defendant's rehabilitation from a conviction stemming from an alleged drug sale involving accomplices (see People v Vasquetelles , 241 AD3d 1208, 1209 [1st Dept 2025], lv denied — NY3d — [2025]). Defendant's constitutional challenge to condition seven is unpreserved (see Lowndes , 239 AD3d at 575), and we decline to review it in the interest of justice. As an alternative holding, we find the constitutional claim to be unavailing (see People v Carrasquillo , 242 AD3d 424, 425 [1st Dept 2025]). Condition 11, which admonishes defendant to "not possess or purchase a firearm," is properly designed to help "ensure that he will lead a law-abiding life" (People v Alvarez , 233 AD3d 619, 620 [1st Dept 2024], lv denied 43 NY3d 961 [2025]) since he is not eligible to possess or purchase a firearm under both federal and state law (see 18 USC § 922[g][1]; Penal Law § 400.00[1][c]). However, conditions 10 and 24 of defendant's probation should be stricken as not reasonably related to his rehabilitation or necessary to ensure he leads a law-abiding life (Penal Law § 65.10 [1]). Condition 10, which requires defendant to pay

charges and fees associated with his conviction, will not help to ensure that he leads a law-abiding life and is not reasonably related to his rehabilitation (see *People v Percy* , 234 AD3d 619, 620 [1st Dept 2025]). We note that the People do not oppose this relief. Additionally, condition 24, which concerns gang affiliation, is not related to defendant's rehabilitation as "there is no evidence that defendant's crime was connected to any gang activities or that he has any history of gang membership or gang affiliation" (*People v Holguin* , 243 AD3d 419, 420 [1st Dept 2025]). We are not persuaded by the People's contention that defendant's position with respect to condition 24 is not ripe for review. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: February 19, 2026