

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)