

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

People v. Perdomo

2025 NY Slip Op 07342 (N.Y. Ct. App. 2025) · No. SCI No. 74153/23; Appeal No. 5459; Case No. 2023-05396 · Decided December 30, 2025

SUMMARY

The Appellate Division, First Department modified Neil Perdomo's criminal judgment by striking the condition of probation requiring payment of the surcharge and other fees, and otherwise affirmed. The court upheld other probation conditions, rejected or declined to reach the defendant's challenges, and found no basis to reduce the sentence.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Moulton, J.P.; Scarpulla, J.; Rosado, J.; O'Neill Levy, J.; Chan, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	December 30, 2025
DOCKET	SCI No. 74153/23; Appeal No. 5459; Case No. 2023-05396
DISPOSITION	other
PROCEDURAL POSTURE	Defendant appealed from a judgment of Supreme Court, New York County, convicting him upon his plea of attempted criminal possession of a weapon in the second degree and sentencing him to six months in jail and five years of probation.
PRECEDENTIAL VALUE	published
PARTIES	Neil Perdomo, Defendant-Appellant v. The People of the State of New York, Respondent

TOPICS

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

PRACTICE AREAS

- criminal law
- criminal procedure
- sentencing
- probation
- appellate practice

QUESTIONS PRESENTED

1. Whether defendant's waiver of the right to appeal foreclosed his challenge to the excessiveness of his sentence.
2. Whether the probation condition requiring defendant to avoid injurious or vicious habits, unlawful or disreputable places, and disreputable people was a proper condition of probation.
3. Whether the sentencing court improperly imposed payment of the surcharge and other fees as a condition of probation.
4. Whether defendant's constitutional challenges to the challenged probation condition were preserved for appellate review.

HOLDINGS

1. Defendant's waiver of the right to appeal was valid and therefore foreclosed his claim that the sentence was excessive.
2. The probation condition was properly imposed because it would reasonably assist defendant in leading a law-abiding life.
3. Defendant's constitutional challenges were unpreserved, and the court declined to reach them in the interest of justice.
4. The sentencing court improperly imposed payment of the surcharge and other fees as a condition of probation because that requirement was not reasonably related to defendant's rehabilitation or necessary to ensure that he would lead a law-abiding life.

KEY QUOTATIONS

*“However, the sentencing court improperly imposed, as a condition of probation, a requirement of payment of the surcharge and other fees imposed at sentencing, as it is not reasonably related to defendant's rehabilitation or necessary to ensure that he will lead a law-abiding life” (*1)*

*“This condition would reasonably assist defendant in leading a law-abiding life, given his admission of gang affiliation, substance abuse, and expressed desire to change his life and "benefit from his impending probation term"” (*1)*

FACTUAL BACKGROUND

Defendant was convicted of attempted criminal possession of a weapon in the second degree after an offense involving brandishing and firing a gun. He admitted that he was under the influence of alcohol and drugs during the offense, had gang affiliation and substance-abuse issues, and expressed a desire to change his life and benefit from probation. The sentencing court imposed six months in jail and five years of probation, including conditions concerning injurious or vicious habits, unlawful or disreputable places, disreputable people, and payment of surcharges and fees.

PROCEDURAL HISTORY

Supreme Court, New York County, entered judgment on October 17, 2023, after a plea and sentencing proceedings. On appeal, the Appellate Division held that defendant's appeal waiver foreclosed his excessive-sentence claim, upheld one probation condition, and modified the judgment by striking the condition requiring payment of the surcharge and fees as a condition of probation.

DISPOSITION

other

CASES CITED

- People v. Thomas, 34 NY3d 545 (2019), cert. denied, 589 U.S. —, 140 S. Ct. 2634 (2020)
- People v. Bryant, 28 NY3d 1094 (2016)
- People v. Lowndes, 239 AD3d 574, 575 (1st Dep't 2025)
- People v. Cabrera, 41 NY3d 53, 42 (2023)
- People v. Wood, 239 AD3d 484, 484 (1st Dep't 2025)
- People v. Percy, 234 AD3d 619, 620 (1st Dep't 2025)

OPINION

PER CURIAM.

People v Perdomo (2025 NY Slip Op 07342) People v Perdomo 2025 NY Slip Op 07342 Decided on December 30, 2025 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: December 30, 2025 Before: Moulton, J.P., Scarpulla, Rosado, O'Neill Levy, Chan, JJ. SCI No. 74153/23|Appeal No. 5459|Case No. 2023-05396| [*1]The People of the State of New York, Respondent, v Neil Perdomo, 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 (Laurie Peterson, J., at plea, and Marisol Martinez Alonso, J., at sentencing), rendered October 17, 2023, convicting defendant of attempted criminal possession of a weapon in the second degree, and sentencing him to a jail term of six months and five years of probation, unanimously modified, on the law, to the extent of striking the condition of probation requiring him to pay the surcharge and fees imposed at sentencing as a condition of his probation, and otherwise affirmed.

Defendant's waiver of the right to appeal was valid (see People v Thomas, 34 NY3d 545 [2019], cert denied 589 US —, 140 S Ct 2634 [2020]; People v Bryant, 28 NY3d 1094 [2016]), which forecloses his claim that his sentence is excessive.

In any event, we perceive no basis for reducing the sentence. The court providently imposed, as a condition of probation, a requirement that defendant "[a]void injurious or vicious habits; refrain from frequenting unlawful or disreputable places; and do not consort with disreputable people." Defendant's offense involved him brandishing and firing a gun, while, per his own admission, under the influence of alcohol and drugs.

This condition would reasonably assist defendant in leading a law-abiding life, given his admission of gang affiliation, substance abuse, and expressed desire to change his life and "benefit from his impending probation term" (see Penal Law §§ 65.10[1],[2]; *People v Lowndes*, 239 AD3d 574, 575 [1st Dept 2025]). Defendant's constitutional challenges to this provision are unpreserved (see *People v Cabrera*, 41 NY3d 53, 42 [2023]), and we decline to reach them in the interest of justice.

However, the sentencing court improperly imposed, as a condition of probation, a requirement of payment of the surcharge and other fees imposed at sentencing, as it is not reasonably related to defendant's rehabilitation or necessary to ensure that he will lead a law-abiding life (see *People v Wood*, 239 AD3d 484, 484 [1st Dept 2025]; *People v Percy*, 234 AD3d 619, 620 [1st Dept 2025]).

Given that we are vacating this condition, we need not decide whether it conflicts with CPL 420.35(1). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: December 30, 2025

PER CURIAM.

People v Perdomo (2025 NY Slip Op 07342) *People v Perdomo* 2025 NY Slip Op 07342 Decided on December 30, 2025 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: December 30, 2025 Before: Moulton, J.P., Scarpulla, Rosado, O'Neill Levy, Chan, JJ. SCI No. 74153/23|Appeal No. 5459|Case No. 2023-05396| [*1]The People of the State of New York, Respondent, v Neil Perdomo, Defendant-Appellant.

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