

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

People v. Thompson

Tompson, 2026 NY Slip Op 00325 (Supreme Court of the State of New York Appellate Division First Department 2026) · No. SCI No. 74206/23; Appeal No. 5674; Case No. 2023-04783 · Decided January 27, 2026

SUMMARY

The Appellate Division, First Department modified the defendant's probation sentence by striking conditions requiring support of dependents and prohibiting gang paraphernalia or association, finding no evidentiary support for those conditions. The court otherwise affirmed the judgment, declined to review several constitutional challenges as unpreserved, and held that the defendant's appeal waiver foreclosed review of certain as-applied claims.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Moulton, J.P.; Mendez, J.; Rodriguez, J.; Rosado, J.; Hagler, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, First Department
DECIDED	January 27, 2026
DOCKET	SCI No. 74206/23; Appeal No. 5674; Case No. 2023-04783
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a Supreme Court, New York County judgment rendered after his guilty plea and sentence to three years of probation for criminal possession of a controlled substance in the third degree.
STANDARD OF REVIEW	The court reviewed the legality and evidentiary basis of the probation conditions on appeal. Nonconstitutional challenges implicating the legality of the sentence were reviewable without preservation; constitutional challenges were subject to preservation requirements and, where applicable, the defendant's appeal waiver.
PRECEDENTIAL VALUE	Published New York intermediate appellate opinion
PARTIES	Anthony Thompson v. The People of the State of New York

TOPICS

probation sentencing criminal procedure appellate procedure preservation of error

PRACTICE AREAS

criminal law criminal procedure sentencing and probation appellate procedure

QUESTIONS PRESENTED

1. Whether the probation conditions requiring defendant to support dependents and meet other family responsibilities, and to refrain from gang paraphernalia and gang associations, were supported by the record and authorized by law.
2. Whether the remaining challenged probation conditions were reasonably necessary to ensure that defendant led a law-abiding life or to assist him in doing so.
3. Whether the defendant's appeal waiver barred his constitutional challenges to the probation conditions.
4. Whether the defendant's unpreserved constitutional challenges should be reviewed in the interest of justice.
5. Whether the challenge to probation condition 10 was moot because defendant had paid the mandatory surcharge and fees.

HOLDINGS

1. A probation condition requiring a defendant to support dependents and meet other family responsibilities must be supported by evidence relevant to the defendant; because defendant had no children and the record contained no supporting evidence, the condition was stricken.
2. The probation conditions requiring defendant to refrain from wearing or displaying gang paraphernalia and from associating with gangs or gang members were stricken because the record contained no evidence supporting them.
3. The sentencing court properly imposed conditions requiring defendant to avoid injurious or vicious habits and disreputable places and people, pursue suitable employment, study, or training, submit proof of that activity, undergo testing for alcohol and illegal substances, and participate in substance-abuse programming.
4. The court declined to strike probation condition 10 because defendant had paid the mandatory surcharge and fees, rendering the challenge moot.
5. The defendant's valid appeal waiver barred review of his constitutional due-process challenge to the probation-conditions form and his as-applied vagueness and First Amendment challenges, but did not bar facial constitutional challenges.
6. The defendant's constitutional challenges were unpreserved, and the court declined to review them in the interest of justice.

KEY QUOTATIONS

*“Judgment, Supreme Court, New York County (Laurie Peterson, J.), rendered August 30, 2023, convicting defendant, upon his plea of guilty, of criminal possession of a controlled substance in the third degree, and sentencing him to a term of three years of probation, unanimously modified, on the law, to the extent of striking the conditions of probation requiring him to “[s]upport dependents and meet other family responsibilities,” and to “[r]efrain from wearing or displaying gang paraphernalia” or “having any association with a gang or members of a gang if directed by the Department of Probation,” and otherwise affirmed.” (*1)*

FACTUAL BACKGROUND

At the time of his arrest, defendant possessed 100 glassines of heroin and 50 vials of crack cocaine. He pleaded guilty to criminal possession of a controlled substance in the third degree and received a three-year probation sentence. The record contained no evidence that defendant had children or gang affiliations supporting certain challenged probation conditions.

PROCEDURAL HISTORY

Supreme Court, New York County, convicted defendant upon his guilty plea and sentenced him to three years of probation. On appeal, the First Department modified the judgment by striking two groups of probation conditions, declined to strike another condition as moot, and otherwise affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Alvarez, 233 AD3d 619, 620 [1st Dept 2024], lv denied 43 NY3d 961 [2025]
- People v. Lowndes, 239 AD3d 574, 575 [1st Dept 2025], lv denied 44 NY3d 1012 [2025]
- People v. Holguin, 243 AD3d 419, 420 [1st Dept 2025]
- People v. Thomas, 34 NY3d 545, 560 [2019], cert denied 589 U.S. —, 140 S. Ct. 2634 [2020]
- People v. Lombard, 241 AD3d 1126, 1126 [1st Dept 2025]
- People v. Johnson, — NY3d —, 2025 NY Slip Op 06528, *2 [2025]
- People v. Cabrera, 41 NY3d 35, 42 [2023]

OPINION

PER CURIAM.

People v. Thompson (2026 NY Slip Op 00325) People v. Thompson 2026 NY Slip Op 00325
Decided on January 27, 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: January 27, 2026 Before: Moulton, J.P., Mendez, Rodriguez, Rosado, Hagler, JJ. SCI No. 74206/23|Appeal No. 5674|Case

No. 2023-04783| [*1]The People of the State of New York, Respondent, v Anthony Tompson, Defendant-Appellant.

Jenay Nurse Guilford, Center for Appellate Litigation, New York (Leanna J. Duncan of counsel), for appellant. Alvin L. Bragg, Jr., District Attorney, New York (Margaret M. Crookston of counsel), for respondent. Judgment, Supreme Court, New York County (Laurie Peterson, J.), rendered August 30, 2023, convicting defendant, upon his plea of guilty, of criminal possession of a controlled substance in the third degree, and sentencing him to a term of three years of probation, unanimously modified, on the law, to the extent of striking the conditions of probation requiring him to "[s]upport dependents and meet other family responsibilities," and to "[r]efrain from wearing or displaying gang paraphernalia" or "having any association with a gang or members of a gang if directed by the Department of Probation," and otherwise affirmed.

Defendant's non-constitutional challenges to his probation conditions do not require preservation because the "issue implicates the legality of the sentence imposed" (*People v Alvarez*, 233 AD3d 619, 620 [1st Dept 2024], lv denied 43 NY3d 961 [2025]). At the time of his arrest, defendant possessed 100 glassines of heroin and 50 vials of crack cocaine.

Accordingly, the sentencing court providently deemed it "reasonably necessary" to order defendant to "[a]void injurious or vicious habits; refrain from frequenting unlawful or disreputable places; and... not consort with disreputable people" "to insure that the defendant will lead a law-abiding life or to assist him to do so" (*People v Lowndes*, 239 AD3d 574, 575 [1st Dept 2025] [citation omitted], lv denied 44 NY3d 1012 [2025]).

Based on defendant's selling of heroin, the court also properly ordered him to "[w]ork faithfully at a suitable employment or pursue a course of study or vocational training approved by the Department of Probation that can lead to suitable employment" and to "[s]ubmit proof of such employment, study or training as directed by the Department of Probation" (see Penal Law § 65.10[1], [2][c]).

For the same reason, the court providently required defendant to submit to testing for alcohol and illegal substances and to participate in substance abuse programming as directed by the Department of Probation (see Penal Law § 65.10[2][e]). There is, however, no evidence to support requiring defendant, who has no children, to "[s]upport dependents and meet other family responsibilities" (see Penal Law § 65.10[2][f]; see also *People v Holguin*, 243 AD3d 419, 420 [1st Dept 2025] [no evidence to support probation condition]).

Additionally, the People concede that there is no evidence to support requiring defendant to "[r]efrain 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" (see *Holguin*, 243 AD3d at 420).

We decline to strike probation condition 10 because defendant has paid the mandatory surcharge and fees, rendering the issue moot. Defendant's undisputedly valid waiver of his right to appeal (see *People v Thomas*, 34 NY3d 545, 560 [2019], cert denied 589 US &mdash, 140 S Ct 2634 [2020]) forecloses review of his constitutional due process challenge to the conditions of probation form and his vagueness and First Amendment challenges to probation conditions 7 and 25 insofar as they are as-applied challenges (see *People v Lombard*, 241 AD3d 1126, 1126 [1st Dept 2025]).

To the extent that defendant's claims are facial constitutional challenges, they survive his appeal waiver (see *People v Johnson*, — NY3d &mdash, 2025 NY Slip Op 06528, *2 [2025]). However, all of defendant's constitutional challenges are unpreserved (see *People v Cabrera*, 41 NY3d 35, 42 [2023]), and we decline to review them in the interest of justice. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: January 27, 2026