

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

People v. Rivera

2026 NY Slip Op 00063 (App. Div. 2026) · No. Ind No. 71561/23; Appeal No. 5538; Case No. 2024-04019 ·
Decided January 8, 2026

SUMMARY

The Appellate Division, First Department modified the Bronx County judgment convicting Jose C. Rivera of criminal sale of a controlled substance in the third degree and sentencing him to three years of probation. The court struck the probation condition requiring payment of \$375 in surcharge and fees because Rivera was indigent and unemployed, and otherwise affirmed the judgment.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Moulton, J.P.; González, J.; Mendez, J.; Rodriguez, J.; Pitt-Burke, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	January 8, 2026
DOCKET	Ind No. 71561/23; Appeal No. 5538; Case No. 2024-04019
DISPOSITION	other
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Supreme Court, Bronx County, entered after his guilty plea and sentencing for criminal sale of a controlled substance in the third degree.
STANDARD OF REVIEW	The court reviewed the sentence and probation condition for legal error and considered whether the condition was reasonably related to the defendant's rehabilitation. The court also reviewed the effect of defendant's valid waiver of appellate rights on his excessive-sentence claim.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Jose C. Rivera, Defendant-Appellant v. The People of the State of New York, Respondent

TOPICS

probation

sentencing

appellate procedure

remedies

criminal procedure

PRACTICE AREAS

criminal law

criminal procedure

sentencing

probation

appellate procedure

QUESTIONS PRESENTED

1. Whether defendant's valid waiver of the right to appeal foreclosed review of his excessive-sentence claim.
2. Whether requiring an indigent and unemployed defendant to pay \$375 in surcharge and fees as a condition of probation was reasonably related to rehabilitation under Penal Law § 65.10(2)(l).
3. Whether the defendant's sentence otherwise warranted reduction.

HOLDINGS

1. A valid waiver of the right to appeal foreclosed review of defendant's excessive-sentence claim.
2. Under the particular circumstances of this case, requiring defendant to pay \$375 in surcharge and fees as a condition of probation was not reasonably related to his rehabilitation and therefore had to be stricken.
3. The court found no basis to reduce the remainder of defendant's sentence.

KEY QUOTATIONS

“Under “the particular circumstances of [this] case” (*People v Percy* , 234 AD3d 619 , 620 [1st Dept 2025]), requiring payment of the surcharge and fees is not “reasonably related to [defendant's] rehabilitation” (Penal Law § 65.10[2][l]).”

FACTUAL BACKGROUND

Rivera pleaded guilty to criminal sale of a controlled substance in the third degree and received a three-year term of probation. The probation sentence included a condition requiring him to pay \$375 in surcharge and fees. The court noted that Rivera was indigent and unemployed, and the People did not oppose striking that condition.

PROCEDURAL HISTORY

The Supreme Court, Bronx County, rendered judgment on June 12, 2024, convicting Rivera upon his guilty plea and sentencing him to three years of probation. The Appellate Division unanimously modified the judgment by striking the probation condition requiring payment of \$375 in surcharge and fees, and otherwise affirmed.

DISPOSITION

other

CASES CITED

- *People v. Thomas*, 34 NY3d 545, 567 [2019], cert denied 589 US —, 140 S Ct 2634 [2020]

- People v. Lowndes, 239 AD3d 574, 575 [1st Dept 2025], lv denied 44 NY3d 1012 [2025]
- People v. Percy, 234 AD3d 619, 620 [1st Dept 2025]

OPINION

PER CURIAM.

People v Rivera (2026 NY Slip Op 00063) People v Rivera 2026 NY Slip Op 00063 Decided on January 08, 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 08, 2026 Before: Moulton, J.P., González, Mendez, Rodriguez, Pitt-Burke, JJ. Ind No. 71561/23|Appeal No. 5538|Case No. 2024-04019| [*1]The People of the State of New York, Respondent, v Jose C. Rivera, Defendant-Appellant.

Jenay Nurse Guilford, Center for Appellate Litigation, New York (Abigail Everett of counsel), for appellant. Darcel D. Clark, District Attorney, Bronx (Aidan Sanchez of counsel), for respondent. Judgment, Supreme Court, Bronx County (Verena C. Powell, J.), rendered June 12, 2024, convicting defendant, upon his plea of guilty, of criminal sale 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 condition of probation requiring him to pay \$375 in surcharge and fees as a condition of his probation, and otherwise affirmed.

Defendant made a valid waiver of his right to appeal (see People v Thomas, 34 NY3d 545, 567 [2019], cert denied 589 US —, 140 S Ct 2634 [2020]), foreclosing 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. Under "the particular circumstances of [this] case" (People v Percy, 234 AD3d 619, 620 [1st Dept 2025]), requiring payment of the surcharge and fees is not "reasonably related to [defendant's] rehabilitation" (Penal Law § 65.10[2][l]). Defendant is indigent and unemployed (see Percy, 234 AD3d at 620).

Accordingly, that condition is stricken. We note that the People do not oppose this relief.THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: January 8, 2026

PER CURIAM.

People v Rivera (2026 NY Slip Op 00063) People v Rivera 2026 NY Slip Op 00063 Decided on January 08, 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 08, 2026 Before:

Moulton, J.P., González, Mendez, Rodriguez, Pitt-Burke, JJ. Ind No. 71561/23|Appeal No. 5538|Case No. 2024-04019| [*1]The People of the State of New York, Respondent, v Jose C. Rivera, Defendant-Appellant.

Jenay Nurse Guilford, Center for Appellate Litigation, New York (Abigail Everett of counsel), for appellant. Darcel D. Clark, District Attorney, Bronx (Aidan Sanchez of counsel), for respondent. Judgment, Supreme Court, Bronx County (Verena C. Powell, J.), rendered June 12, 2024, convicting defendant, upon his plea of guilty, of criminal sale 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 condition of probation requiring him to pay \$375 in surcharge and fees as a condition of his probation, and otherwise affirmed.

Defendant made a valid waiver of his right to appeal (see *People v Thomas*, 34 NY3d 545, 567 [2019], cert denied 589 US —, 140 S Ct 2634 [2020]), foreclosing 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. Under "the particular circumstances of [this] case" (*People v Percy*, 234 AD3d 619, 620 [1st Dept 2025]), requiring payment of the surcharge and fees is not "reasonably related to [defendant's] rehabilitation" (Penal Law § 65.10[2][l]). Defendant is indigent and unemployed (see *Percy*, 234 AD3d at 620).

Accordingly, that condition is stricken. We note that the People do not oppose this relief. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: January 8, 2026