

**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

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][1]). 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

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