

NEW YORK SUPREME COURT, APPELLATE DIVISION, THIRD
DEPARTMENT

People v. Byrd

2026 NY Slip Op 01560 · No. CR-23-2034 · Decided March 19, 2026

SUMMARY

The Appellate Division, Third Department, affirmed a Broome County judgment convicting Kemonei M. Byrd upon a guilty plea to attempted criminal possession of a weapon in the second degree. The court held that the defendant's waiver of the right to appeal was knowing and voluntary, and rejected or found unpreserved his challenges to the plea's voluntariness, factual sufficiency, and effective assistance of counsel.

CASE DETAILS

COURT	New York Supreme Court, Appellate Division, Third Department
WRITING FOR THE COURT	Reynolds Fitzgerald, J.; Clark, J.P.; Ceresia, J.; Powers, J.; Corcoran, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	March 19, 2026
DOCKET	CR-23-2034
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a County Court judgment convicting him upon his guilty plea to attempted criminal possession of a weapon in the second degree.
STANDARD OF REVIEW	The court reviewed the validity of the appeal waiver and the preservation of defendant's plea-related claims de novo on the appellate record; unpreserved claims were not reviewable absent the narrow exception to the preservation requirement.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Kemonei M. Byrd v. The People of the State of New York

TOPICS

- plea bargaining preservation of error right to counsel criminal procedure appellate procedure

PRACTICE AREAS

criminal procedure

appellate procedure

plea bargaining

ineffective assistance

QUESTIONS PRESENTED

1. Whether defendant's written and oral waiver of the right to appeal was knowing and voluntary and therefore valid.
2. Whether defendant's challenges to the voluntariness and factual sufficiency of his guilty plea were preserved for appellate review.
3. Whether defendant's ineffective-assistance claim, insofar as it implicated the voluntariness of the plea, was preserved and meritorious.
4. Whether the guilty plea required a factual recitation establishing every element of the reduced offense.

HOLDINGS

1. The appeal waiver was valid because the oral colloquy and defendant's assurances established that he knowingly and voluntarily understood and waived his right to appeal, notwithstanding potentially overbroad language in the written waiver.
2. Defendant's challenges to the voluntariness and factual sufficiency of the plea, and his ineffective-assistance claim to the extent it implicated plea voluntariness, were unpreserved because he did not make an appropriate postallocution motion and the narrow exception to the preservation requirement was not triggered.
3. When a defendant pleads guilty to a lesser crime as part of a plea bargain, the court is not required to conduct a factual recitation establishing every element of the crime.
4. Even if considered, defendant's ineffective-assistance claim lacked merit because the record reflected meaningful representation, defendant expressed satisfaction with counsel, and counsel obtained an advantageous plea.

KEY QUOTATIONS

"[W]here, as here, a defendant pleads to a lesser crime as part of a plea bargain, the court is not required to engage in a factual recitation in order to establish the elements of the crime" (at *1)

"[defendant's] affirmative and unequivocal responses to the inquiries posed to him were sufficient to establish not only his guilt but also that he understood the nature and consequences of the plea" (at *1)

FACTUAL BACKGROUND

Defendant was charged in an 11-count indictment and entered a negotiated guilty plea to the reduced charge of attempted criminal possession of a weapon in the second degree. As a condition of the plea agreement, he waived his right to appeal. The County Court explained that the waiver was separate from the rights forfeited by the guilty plea, identified certain claims that survived, and obtained defendant's assurances that he understood and voluntarily accepted the waiver. Defendant received a sentence of three and one-half years in prison followed by three years of postrelease supervision.

PROCEDURAL HISTORY

In satisfaction of an 11-count indictment, defendant pleaded guilty to the reduced charge of attempted criminal possession of a weapon in the second degree and agreed to waive his right to appeal. County Court sentenced him pursuant to the plea agreement to three and one-half years in prison followed by three years of postrelease supervision. Defendant appealed, challenging the validity of the appeal waiver, the voluntariness and factual sufficiency of the plea, and the effectiveness of counsel.

DISPOSITION

affirmed

CASES CITED

- People v. Thomas, 34 NY3d 545, 563-565 (2019)
- People v. Bonser, 244 AD3d 1410, 1410 (3d Dept 2025)
- People v. Austin, 243 AD3d 1068, 1069 (3d Dept 2025)
- People v. Sheehan, 242 AD3d 1260, 1261 (3d Dept 2025), lv denied 44 NY3d 1054 (2025)
- People v. Louree, 8 NY3d 541, 545 (2007)
- People v. Byrd, 239 AD3d 1146, 1147 (3d Dept 2025)
- People v. Werner, 227 AD3d 1273, 1273 (3d Dept 2024)
- People v. Brown, 191 AD3d 1047, 1048 (3d Dept 2021)
- People v. Clairborne, 29 NY2d 950, 951 (1972)
- People v. Gouge, 239 AD3d 1143, 1144 (3d Dept 2025)
- People v. Terry, 244 AD3d 1378, 1379 (3d Dept 2025)
- People v. Vences, 232 AD3d 991, 993 (3d Dept 2024)
- People v. Hooker, 230 AD3d 1465, 1468 (3d Dept 2024)
- People v. Persaud, 219 AD3d 983, 985 (3d Dept 2023), lv denied 40 NY3d 998 (2023)

OPINION

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PER CURIAM.

People v Byrd (2026 NY Slip Op 01560) People v Byrd 2026 NY Slip Op 01560 Decided on March 19, 2026 Appellate Division, Third 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:March 19, 2026 CR-23-2034 [*1]The People of the State of New York, Respondent, v Kemonei M. Byrd, Appellant. Calendar Date:February 9, 2026 Before:Clark, J.P., Reynolds Fitzgerald, Ceresia, Powers and Corcoran, JJ. Amanda FiggsGanter, Albany, for appellant. F. Paul Battisti, District Attorney, Binghamton (Mary E. Saitta of counsel), for respondent. Reynolds Fitzgerald, J. Appeal from a

judgment of the County Court of Broome County (William Pelella, J.), rendered April 25, 2023, convicting defendant upon his plea of guilty of the crime of attempted criminal possession of a weapon in the second degree. In satisfaction of an 11-count indictment, defendant pleaded guilty to the reduced charge of attempted criminal possession of a weapon in the second degree and agreed to waive his right to appeal. County Court sentenced defendant, in accordance with the terms of the plea agreement, to a prison term of 3½ years, to be followed by three years of postrelease supervision. Defendant appeals. Initially, we are unpersuaded by defendant's contention that the waiver of his right to appeal is invalid. Even were we to find that the written appeal waiver contains, among other things, overbroad language, we are satisfied that the oral colloquy and the assurances elicited from defendant with regard to his understanding of the nature and consequences of the appeal waiver were sufficient to support a knowing and voluntary waiver (see *People v Thomas* , 34 NY3d 545 , 563-565 [2019]). To that end, County Court explained to defendant that the appeal waiver, which was a condition of the plea agreement, is separate and distinct from the rights forfeited by the guilty plea. The court specifically advised defendant that, although most claims of errors are waived, limited appellate claims nevertheless survived, some of which the court specifically identified. Defendant assured the court that he had discussed the appeal waiver with counsel, understood it and was voluntarily waiving his right to appeal. Under these circumstances, we find that the appeal waiver is valid (see *People v Bonser* , 244 AD3d 1410 , 1410 [3d Dept 2025]; *People v Austin* , 243 AD3d 1068 , 1069 [3d Dept 2025]; *People v Sheehan* , 242 AD3d 1260 , 1261 [3d Dept 2025], lv denied 44 NY3d 1054 [2025]). Defendant's challenge to the voluntariness and/or factual sufficiency of the plea and assertion that he did not receive the effective assistance of counsel — to the extent that it implicates the voluntariness of his plea — are unpreserved for our review as the record does not reflect that defendant made an appropriate postallocution motion, despite having ample opportunity to do so, and, contrary to defendant's contention, the record does not reflect that the narrow exception to the preservation requirement was triggered (see *People v Louree* , 8 NY3d 541, 545 [2007]; *People v Byrd* , 239 AD3d 1146 , 1147 [3d Dept 2025]; *People v Werner* , 227 AD3d 1273 , 1273 [3d Dept 2024]). In any event, were we to consider such contentions, we would find them to be without merit. "[W]here, as here, a defendant pleads to a lesser crime as part of a plea bargain, the court is not required to engage in a factual recitation in order to establish the elements of the crime" (*People v Brown* , 191 AD3d 1047, 1048 [3d Dept 2021] [internal quotation marks and citations omitted]; see *People v Clairborne* , 29 NY2d 950, 951 [*2][1972]; *People v Gouge* , 239 AD3d 1143 , 1144 [3d Dept 2025]) and "[defendant's] affirmative and unequivocal responses to the inquiries posed to him were sufficient to establish not only his guilt but also that he understood the nature and consequences of the plea" (*People v Terry* , 244 AD3d 1378 , 1379 [3d Dept 2025] [internal quotation marks and citations omitted]; see *People v Vences* , 232 AD3d 991 , 993 [3d Dept 2024]). Further, given defendant's assurance to County Court that he was satisfied with his representation and the advantageous plea, and finding nothing in the record to cast doubt on

counsel's apparent effectiveness, we would find that defendant received meaningful representation (see *People v Hooker* , 230 AD3d 1465 , 1468 [3d Dept 2024]; *People v Persaud* , 219 AD3d 983, 985 [3d Dept 2023], lv denied 40 NY3d 998 [2023]). Clark, J.P., Ceresia, Powers and Corcoran, JJ., concur. ORDERED that the judgment is affirmed.

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