

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

People v. Green

2026 NY Slip Op 03333 (N.Y. Ct. App. 2026) · No. 111780, CR-23-1817 · Decided May 28, 2026

SUMMARY

The Appellate Division, Third Department, affirmed a judgment convicting Kevin Green upon his guilty plea to criminal possession of a weapon in the second degree and an order denying his CPL 440.10 motion to vacate the conviction. The court held that Green's unchallenged appeal waiver precluded review of his suppression, sentencing, and certain ineffective-assistance claims, and that his remaining claims were either unpreserved or improperly raised under CPL article 440 because they could have been presented on direct appeal.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Ryba, J.; Aarons, J.P.; Reynolds Fitzgerald, J.; Powers, J.; Corcoran, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	May 28, 2026
DOCKET	111780, CR-23-1817
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment convicting him upon his guilty plea of criminal possession of a weapon in the second degree and, by permission, from an order denying his CPL 440.10 motion to vacate the judgment of conviction without a hearing.
STANDARD OF REVIEW	The court reviewed the appeal-waiver and preservation issues as matters of law and reviewed the denial of the CPL 440.10 motion under the statutory post-conviction-relief framework, including whether the claims were reviewable on direct appeal under CPL 440.10(2)(b).
PRECEDENTIAL VALUE	Published New York intermediate appellate opinion; precedential within the Third Department subject to later modification or reversal.
PARTIES	Kevin Green v. The People of the State of New York

TOPICS

state post-conviction relief appellate procedure plea bargaining ineffective assistance
preservation of error

PRACTICE AREAS

criminal procedure post-conviction relief appellate procedure plea bargaining ineffective assistance

QUESTIONS PRESENTED

1. Whether defendant's challenges to the suppression of statements and physical evidence and to the severity of his sentence were precluded by his unchallenged appeal waiver.
2. Whether defendant's ineffective-assistance claim survived the appeal waiver as a challenge to the voluntariness of his guilty plea.
3. Whether defendant's ineffective-assistance claim was preserved for appellate review absent a postallocation motion.
4. Whether County Court properly denied defendant's CPL 440.10 motion alleging lack of jurisdiction, fraud or misrepresentation, and constitutional violations where defendant offered no nonrecord evidence and the claims could have been raised on direct appeal.

HOLDINGS

1. Because defendant did not challenge the validity of his appeal waiver, his claims concerning suppression of statements and physical evidence and the purported harshness of his sentence were precluded from appellate review.
2. An ineffective-assistance claim can survive an appeal waiver when it is tied to an assertion that the guilty plea was not knowing and voluntary, but defendant's claim here was precluded because the alleged attorney misconduct occurred before the plea proceeding and did not affect the plea's voluntariness.
3. Defendant's claim that counsel's conduct affected the voluntariness of his guilty plea was unpreserved because he did not make an appropriate postallocation motion, and the narrow exception to the preservation rule did not apply.
4. County Court properly denied defendant's CPL 440.10 motion because his claims, which were supported by no nonrecord evidence, could have been addressed on direct appeal; CPL article 440 was therefore an improper avenue for relief under CPL 440.10(2)(b).

KEY QUOTATIONS

*“unpreserved for our review in the absence of an appropriate postallocation motion” ([*1]-[*2])*

FACTUAL BACKGROUND

In early June 2018, police responded to 911 calls reporting shots fired near 80 West Pier Pont Street in Kingston, Ulster County. The ensuing investigation led to defendant's arrest and indictment on weapons and reckless-endangerment charges. Defendant pleaded guilty to second-degree criminal possession of a weapon, waived his right to appeal, and received a sentence of seven years' imprisonment followed by five years of postrelease supervision.

PROCEDURAL HISTORY

Defendant was indicted for criminal possession of a weapon in the second degree, two counts of criminal possession of a weapon in the third degree, and reckless endangerment in the first degree. He pleaded guilty to criminal possession of a weapon in the second degree in full satisfaction of the indictment and waived his right to appeal. County Court sentenced him as a second felony offender to seven years' imprisonment followed by five years of postrelease supervision. County Court later denied his CPL 440.10 motion in its entirety, and the Appellate Division affirmed both the judgment and the order.

DISPOSITION

affirmed

CASES CITED

- People v. Jean-Pierre, 203 A.D.3d 1226, 1227-1228 (3d Dep't 2022), leave to appeal denied, 38 N.Y.3d 1033 (2022)
- People v. Nack, 200 A.D.3d 1197, 1199 (3d Dep't 2021), leave to appeal denied, 38 N.Y.3d 1009 (2022)
- People v. Rodriguez, 217 A.D.3d 1012, 1013 (3d Dep't 2023)
- People v. Hart, 188 A.D.3d 1424, 1425 (3d Dep't 2020), leave to appeal denied, 36 N.Y.3d 1051 (2021)
- People v. Carden, 233 A.D.3d 1096, 1096 (3d Dep't 2024), leave to appeal denied, 43 N.Y.3d 929 (2025)
- People v. Stanley, 189 A.D.3d 1818, 1818 (3d Dep't 2020)
- People v. Willetts, 234 A.D.3d 1020, 1020 (3d Dep't 2025), leave to appeal denied, 43 N.Y.3d 966 (2025)
- People v. Carota, 235 A.D.3d 1069, 1071 (3d Dep't 2025), leave to appeal denied, 43 N.Y.3d 962 (2025)
- People v. Hooker, 230 A.D.3d 1465, 1468 (3d Dep't 2024)

OPINION

People v. Green 2026 NY Slip Op 03333

PER CURIAM.

People v Green - 2026 NY Slip Op 03333 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions People v Green 2026 NY Slip Op 03333 May 28, 2026 Appellate Division, Third Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports. The People of the State of New York, Respondent, v Kevin Green, Appellant. Decided and Entered: May 28, 2026

111780 , CR-23-1817 Calendar Date: April 22, 2026 Before: Aarons, J.P., Reynolds Fitzgerald, Powers, Corcoran And Ryba, JJ. Craig S. Leeds, Albany, for appellant. Emmanuel C. Nneji, District Attorney, Kingston (Joan Gudesblatt Lamb of counsel), for respondent. [*1] Ryba, J. Appeals (1) from a judgment of the County Court of Ulster County (Donald Williams, J.), rendered April 17, 2019, convicting defendant upon his plea of guilty of the crime of criminal possession of a weapon in the second degree, and (2) by permission, from an order of said court (James Farrell, J.), entered October 19, 2023, which denied defendant's motion pursuant to CPL 440.10 to vacate the judgment of conviction, without a hearing. In early June 2018, police officers responded to 911 calls reporting shots fired in the vicinity of 80 West Pier Pont Street in the City of Kingston, Ulster County. As a result of the investigation that ensued thereafter, defendant was arrested and charged by indictment with criminal possession of a weapon in the second degree, two counts of criminal possession of a weapon in the third degree and reckless endangerment in the first degree. In full satisfaction of the indictment, defendant pleaded guilty to criminal possession of a weapon in the second degree and waived, both orally and in writing, his right to appeal. County Court (Williams, J.) sentenced defendant, as a second felony offender, to a term of imprisonment of seven years, to be followed by five years of postrelease supervision. Years later, defendant moved to vacate the judgment of conviction pursuant to CPL 440.10, which the People opposed. County Court (Farrell, J.) denied defendant's motion in its entirety based on his failure to provide any nonrecord evidence in support of his arguments. Defendant appeals from the judgment of conviction and, by permission, from the order denying his CPL 440.10 motion. Initially, defendant fails to challenge the validity of his appeal waiver. As a result, his arguments pertaining to his motion to suppress statements and physical evidence and his purportedly harsh and severe sentence are precluded from review (see *People v Jean- Pierre* , 203 AD3d 1226, 1227-1228 [3d Dept 2022], lv denied 38 NY3d 1033 [2022]; *People v Nack* , 200 AD3d 1197, 1199 [3d Dept 2021], lv denied 38 NY3d 1009 [2022]). Although defendant attempts to anchor his ineffective assistance of counsel claim to his argument that his plea was not knowing and voluntary — in which case, such would survive his unchallenged appeal waiver (see *People v Rodriguez* , 217 AD3d 1012, 1013 [3d Dept 2023]; *People v Hart* , 188 AD3d 1424, 1425 [3d Dept 2020], lv denied 36 NY3d 1051 [2021]) — he only discusses his counsel's conduct occurring prior to the plea proceeding. Accordingly, we are convinced that those claims of ineffective assistance of counsel do not impact the voluntariness of his guilty plea and are therefore also precluded by the unchallenged appeal waiver (see *People v Carden* , 233 AD3d 1096 , 1096 [3d Dept 2024], lv denied 43 NY3d 929 [2025]). In any event, defendant's claim that his counsel's conduct impacted the voluntariness of his guilty plea is "unpreserved for our review in the absence of an appropriate postallocution motion" and the narrow exception to the [*2] preservation rule has not been implicated (*People v Stanley* , 189 AD3d 1818, 1818 [3d Dept 2020]; see *People v Willetts* , 234 AD3d 1020 , 1020 [3d Dept 2025], lv denied 43 NY3d 966 [2025]). Defendant claims that County Court erred in denying his CPL 440.10 motion to vacate the judgment of conviction, claiming that

the court did not have jurisdiction over the action or his person (see CPL 440.10 [1] [a]), the judgment was procured by duress, misrepresentation or fraud on the part of a person acting for or on behalf of the People (see CPL 440.10 [1] [b]) and that the judgment was obtained in violation of his constitutional rights (see CPL 440.10 [1] [h]). His arguments largely centered on an accusation that the main police witness lied and misrepresented to the grand jury, which defendant claims rendered the indictment invalid. To support his motion, however, defendant provided no nonrecord evidence. As such, his claims could have been addressed on direct appeal, CPL article 440 was an improper avenue for relief and the court properly denied his motion as a result (see CPL 440.10 [2] [b]; *People v Carota* , 235 AD3d 1069 , 1071 [3d Dept 2025], lv denied 43 NY3d 962 [2025]; *People v Hooker* , 230 AD3d 1465 , 1468 [3d Dept 2024]). To the extent that they are not addressed herein, we have considered defendant's remaining arguments and find them lacking in merit. Aarons, J.P., Reynolds Fitzgerald, Powers and Corcoran, JJ., concur. ORDERED that the judgment and the order are affirmed. Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.