

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

People v. Urgitano

2026 NY Slip Op 02884 (N.Y. Ct. App. 2026) · No. Ind. No. 1561/16; Appeal Nos. 6554-6554A-M-1467; Case Nos. 2019-986, 2024-06269 · Decided May 7, 2026

SUMMARY

The Appellate Division, First Department unanimously affirmed Joseph Urgitano's judgment of conviction for first-degree assault and his 18-year sentence as a second violent felony offender. It also affirmed the denial of his CPL 440.10 motion to vacate the judgment, rejecting claims concerning ineffective assistance of counsel, justification, witness immunity, speedy trial, sentencing counsel, and related issues. The court denied a motion to enlarge the record.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Moulton, J.P.; Gesmer, J.; Higgitt, J.; Michael, J.; Chan, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	May 7, 2026
DOCKET	Ind. No. 1561/16; Appeal Nos. 6554-6554A-M-1467; Case Nos. 2019-986, 2024-06269
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of conviction after a jury trial and from an order denying his CPL 440.10 motion to vacate the judgment. He also moved to enlarge the appellate record.
STANDARD OF REVIEW	The court reviewed the immunity determination for abuse of discretion, the denial of new counsel for abuse of discretion, and the justification-charge issue under whether any reasonable view of the evidence, viewed in the light most favorable to defendant, supported the defense. The ineffective-assistance claims were evaluated under both the federal Strickland standard and New York's meaningful-representation standard.
PRECEDENTIAL VALUE	published

PARTIES

Joseph Urgitano, Defendant-Appellant v. The People of the State of New York, Respondent

TOPICS

ineffective assistance

post-conviction relief

criminal procedure

speedy trial

self defense

PRACTICE AREAS

criminal procedure

post-conviction relief

appellate procedure

ineffective assistance of counsel

criminal evidence

QUESTIONS PRESENTED

1. Whether defendant received ineffective assistance of counsel under federal and New York standards.
2. Whether counsel was ineffective for failing to challenge the serious-physical-injury element, object to medical records or physician testimony, request a missing-witness charge, object to the victim's invocation of the right to remain silent, or separately offer surveillance video that was already part of an admitted exhibit.
3. Whether the trial court or the People deprived defendant of a fair trial by failing to grant immunity to a witness and whether the court properly denied a justification charge.
4. Whether defendant's speedy-trial motion was timely and, if considered on the merits, whether the prosecution established good cause for delay.
5. Whether the trial court abused its discretion in denying defendant's request for new counsel at sentencing and whether defendant preserved an Erlinger challenge by failing to contest his criminal history.

HOLDINGS

1. Defendant failed to establish ineffective assistance under either the federal Strickland standard or New York's meaningful-representation standard because the evidence of guilt was overwhelming and the challenged acts or omissions did not demonstrate deficient performance or prejudice.
2. Counsel was not ineffective for failing to move for dismissal because the medical evidence supported a finding of serious physical injury.
3. Defendant's fair-trial claim based on the refusal to grant witness immunity was unavailing, and the trial court properly denied a justification charge because no reasonable view of the evidence supported either the objective or subjective aspects of justification.
4. Defendant's speedy-trial motion was untimely because it was made after verdict. Even if considered on the merits, the claim would fail because the People established good cause for delay, including threats to the victim that raised safety concerns about testifying.
5. The trial court did not abuse its discretion in denying defendant's motion for new counsel at sentencing.
6. Defendant failed to preserve any Erlinger challenge by failing to contest his criminal history, including the relevant periods of incarceration.

KEY QUOTATIONS

“In light of the overwhelming evidence of defendant's guilt, defendant has not established prejudice for purposes of a federal claim” ([*1])

“Moreover, the court properly denied defendant's request for a justification charge, since there was no reasonable view of the evidence, viewed in the light most favorable to defendant, to support either the objective or subjective aspects of this defense” ([*2])

FACTUAL BACKGROUND

After a jury trial, defendant was convicted of first-degree assault arising from knife wounds inflicted on the victim. The medical evidence showed that the victim could ultimately have died if the wounds were left untreated, and that he suffered substantial pain and required significant rehabilitation. Surveillance video showed defendant was the aggressor, while medical records and physician testimony addressed the nature, extent, and likely prognosis of the injuries.

PROCEDURAL HISTORY

The Supreme Court, Bronx County, entered judgment on November 7, 2018, convicting defendant of assault in the first degree and sentencing him as a second violent felony offender to 18 years. That court later denied defendant's CPL 440.10 motion by order entered on or about September 13, 2024. The Appellate Division unanimously affirmed both the judgment and the order and denied the motion to enlarge the record.

DISPOSITION

affirmed

CASES CITED

- People v. Benevento, 91 N.Y.2d 708, 713-714 (1998)
- Strickland v. Washington, 466 U.S. 668, 687 (1984)
- People v. Stultz, 2 N.Y.3d 277, 283-284 (2004)
- People v. Rudenko, 151 A.D.3d 1084, 1084 (2d Dep't 2017), lv. denied, 30 N.Y.3d 953 (2017)
- People v. Wong, 165 A.D.3d 468, 468 (1st Dep't 2018), lv. denied, 32 N.Y.3d 1116 (2018)
- People v. Caban, 5 N.Y.3d 143, 152 (2005)
- People v. Graham, 201 A.D.3d 143, 152 (1st Dep't 2021), lv. denied, 38 N.Y.3d 950 (2022)
- People v. Brown, 33 N.Y.3d 316, 320-321 (2019)
- People v. Goetz, 68 N.Y.2d 96, 115 (1986)
- People v. Watts, 57 N.Y.2d 299, 301-302 (1982)
- People v. Prosano, 279 A.D.2d 329, 329 (1st Dep't 2001), lv. denied, 96 N.Y.2d 833 (2001)
- People v. Decker, 13 N.Y.3d 12, 15 (2009)
- People v. Regan, 39 N.Y.3d 459, 465 (2023), citing People v. Taranovich, 37 N.Y.2d 442, 445 (1975)
- People v. O'Daniel, 24 N.Y.3d 134, 138 (2014)

- People v. Scott, 222 A.D.3d 663, 664-665 (2d Dep't 2023)
- People v. Hernandez, 43 N.Y.3d 591, 597-598 (2025)

OPINION

PER CURIAM.

People v Urgitano - 2026 NY Slip Op 02884 skip to main content

It appears you are using Adblock. Please disable Adblock to best experience our website.

Law Reporting Bureau Home Page

Law Reporting Bureau

Thomas J.K.

Smith, State Reporter Court Decisions Resources About

Home

All Court Decisions

Decisions

People v Urgitano

2026 NY Slip Op 02884

May 7, 2026

Appellate Division, First 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

Joseph Urgitano, Defendant-Appellant.

Decided and Entered: May 07, 2026

Ind No. 1561/16|Appeal No. 6554-6554A-M-1467|Case No. 2019-986 2024-06269

Before: Moulton, J.P., Gesmer, Higgitt, Michael, Chan, JJ.

Law Office of Steven N. Preziosi P.C., New York (Stephen N. Preziosi of counsel), for appellant.

Darcel D. Clark, District Attorney, Bronx (Noah J. Chamoy of counsel), for respondent.

[*1]

Judgment, Supreme Court, Bronx County (James McCarty, J.), rendered November 7, 2018, convicting defendant, after a jury trial, of assault in the first degree, and sentencing him, as a second violent felony offender, to a term of 18 years, unanimously affirmed.

Order, same court (Jeffrey Rosenblueth, J.) entered on or about September 13, 2024, which denied defendant's CPL 440.10 motion to vacate the judgment, unanimously affirmed.

Supreme Court correctly denied defendant's CPL 440.10 motion, as defendant received effective assistance of counsel under state and federal standards (*see People v Benevento*, 91 NY2d 708, 713-714 [1998]; *Strickland v Washington*, 466 US 668 [1984]).

In light of the overwhelming evidence of defendant's guilt, defendant has not established prejudice for purposes of a federal claim (*Strickland*, 466 US at 687) or for purposes of the "meaningful representation" standard that underlies a state claim (*see People v Stultz*, 2 NY3d 277, 283-284 [2004]). Trial counsel was not ineffective in failing to make a motion for a

trial order of dismissal on the ground that the People failed to establish the serious physical injury element of assault in the first degree.

The medical evidence established that if left untreated, the victim could ultimately have died from the knife wounds (*People v Rudenko*, 151 AD3d 1084, 1084 [2d Dept 2017], *lv denied* 30 NY3d 953 [2017]). Additionally, the victim suffered substantial pain and required significant rehabilitation as a result (*see People v Wong*, 165 AD3d 468, 468 [1st Dept 2018], *lv denied* 32 NY3d 1116 [2018]).

The supervising doctor was properly called to testify about the nature and extent of the victim's injuries and, given his experience in trauma care, was qualified to render an opinion about the victim's likely prognosis.

Moreover, certain aspects of the medical records provided support for defendant's theory about the victim's condition at the time of the incident, so counsel's failure to object either to the records or the physician's testimony was not ineffective.

[*2]

Failing to move for a missing witness charge was not ineffective.

Under the circumstances, such an objection would have been futile given the unequivocal representation by counsel for that witness that she would invoke her Fifth Amendment privilege (*see generally People v Caban*, 5 NY3d 143, 152 [2005]).

The trial court properly allowed the victim to invoke his right to remain silent when asked, on cross-examination, about a pending but unrelated criminal matter. Therefore, defense counsel's failure to object to this ruling was not ineffective (*see People v Graham*, 201 AD3d 143, 152 [1st Dept 2021], *lv denied* 38 NY3d 950 [2022]).

Finally, defendant's claim that counsel was ineffective for failing to move into evidence certain video surveillance evidence lacks support in the record, as the video in question was part of a larger exhibit that was entered into evidence. Counsel cannot be faulted for failing to seek redundant admission of the same evidence.

We note also that the video evidence established that defendant was the aggressor, which contraindicates his claim of justification (*see People v Brown*, 33 NY3d 316, 320-321 [2019]).

Defendant's argument that the trial court and the People deprived him of his right to a fair trial by refusing to grant immunity to the witness he claims would support his justification defense is unavailing.

An immunity determination is subject to abuse of discretion review (*see* CPL 50.20; 50.30), and there is no indication in the record that the witness at issue ever sought immunity for her alleged role in the incident as a condition for testifying.

Moreover, the court properly denied defendant's request for a justification charge, since there was no reasonable view of the evidence, viewed in the light most favorable to defendant, to support either the objective or subjective aspects of this defense (*see People v Goetz*, 68 NY2d 96, 115 [1986]; *see People v Watts*, 57 NY2d 299, 301-302 [1982]). Defendant's speedy trial motion was untimely, as it was made after verdict (CPL 210.20[2], CPL 210.20[1][g]; *People v Prosano*, 279 AD2d 329, 329 [1st Dept 2001], lv denied 96 NY2d 833 [2001]).

Were we to consider it on the merits, defendant's claim would fail, as the People established that, among other things, there was good cause for delay because the victim had received threats which gave him concern about his safety if he testified (*see People v Decker*, 13 NY3d 12, 15 [2009]; *People v Regan*, 39 NY3d 459, 465 [2023], citing *People v Taranovich*, 37 NY2d 442, 445 [1975]). The trial court did not abuse its discretion in denying defendant's motion, at sentencing, for new counsel, given the posture of the case and defendant's lack of evidence of specific lapses in counsel's representation *s* (see *People v O'Daniel*, 24 NY3d 134, 138 [2014]; *People v Scott*, 222 AD3d 663, 664-65 [2d Dept 2023]).

Finally, by failing to contest his criminal history, including the relevant periods of incarceration, defendant failed to preserve any *Erlinger* challenge (*People v Hernandez*, 43 NY3d 591, 597-598 [2025]). We have considered defendant's remaining arguments and find them unavailing.

M-1467 — People v Joseph Urgitano

Motion by defendant to enlarge the record, denied.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 7, 2026

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.

PER CURIAM.

People v Urgitano - 2026 NY Slip Op 02884

skip to main content

It appears you are using Adblock. Please disable Adblock to best experience our website.



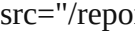
Law Reporting Bureau Home Page

Law Reporting Bureau

Thomas J.K.

Smith, State Reporter

Court Decisions Resources About



Home

All Court Decisions

Decisions

People v Urgitano

2026 NY Slip Op 02884

May 7, 2026

Appellate Division, First 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

Joseph Urgitano, Defendant-Appellant.

Decided and Entered: May 07, 2026

Ind No. 1561/16|Appeal No. 6554-6554A-M-1467|Case No. 2019-986 2024-06269

Before: Moulton, J.P., Gesmer, Higgitt, Michael, Chan, JJ.

Law Office of Steven N. Preziosi P.C., New York (Stephen N. Preziosi of counsel), for appellant.

Darcel D. Clark, District Attorney, Bronx (Noah J. Chamoy of counsel), for respondent.

¹

Judgment, Supreme Court, Bronx County (James McCarty, J.), rendered November 7, 2018, convicting defendant, after a jury trial, of assault in the first degree, and sentencing him, as a second violent felony offender, to a term of 18 years, unanimously affirmed.

Order, same court (Jeffrey Rosenblueth, J.) entered on or about September 13, 2024, which denied defendant's CPL 440.10 motion to vacate the judgment, unanimously affirmed.

Supreme Court correctly denied defendant's CPL 440.10 motion, as defendant received effective assistance of counsel under state and federal standards (*see People v Benevento*, 91 NY2d 708, 713-714 [1998]; *Strickland v Washington*, 466 US 668 [1984]).

In light of the overwhelming evidence of defendant's guilt, defendant has not established prejudice for purposes of a federal claim (*Strickland*, 466 US at 687) or for purposes of the "meaningful representation" standard that underlies a state claim (*see People v Stultz*, 2 NY3d 277, 283-284 [2004]). Trial counsel was not ineffective in failing to make a motion for a trial order of dismissal on the ground that the People failed to establish the serious physical injury element of assault in the first degree.

The medical evidence established that if left untreated, the victim could ultimately have died from the knife wounds (*People v Rudenko*, 151 AD3d 1084, 1084 [2d Dept 2017], *lv denied* 30 NY3d 953 [2017]). Additionally, the victim suffered substantial pain and required significant rehabilitation as a result (*see People v Wong*, 165 AD3d 468, 468 [1st Dept 2018], *lv denied* 32 NY3d 1116 [2018]).

The supervising doctor was properly called to testify about the nature and extent of the victim's injuries and, given his experience in trauma care, was qualified to render an opinion about the victim's likely prognosis.

Moreover, certain aspects of the medical records provided support for defendant's theory about the victim's condition at the time of the incident, so counsel's failure to object either to the records or the physician's testimony was not ineffective.

Failing to move for a missing witness charge was not ineffective.

Under the circumstances, such an objection would have been futile given the unequivocal representation by counsel for that witness that she would invoke her Fifth Amendment privilege (*see generally People v Caban*, 5 NY3d 143, 152 [2005]).

The trial court properly allowed the victim to invoke his right to remain silent when asked, on cross-examination, about a pending but unrelated criminal matter. Therefore, defense counsel's failure to object to this ruling was not ineffective (*see People v Graham*, 201 AD3d 143, 152 [1st Dept 2021], *lv denied* 38 NY3d 950 [2022]).

Finally, defendant's claim that counsel was ineffective for failing to move into evidence certain video surveillance evidence lacks support in the record, as the video in question was part of a larger exhibit that was entered into evidence. Counsel cannot be faulted for failing to seek redundant admission of the same evidence.

We note also that the video evidence established that defendant was the aggressor, which contraindicates his claim of justification (*see People v Brown*, 33 NY3d 316, 320-321 [2019]).

Defendant's argument that the trial court and the People deprived him of his right to a fair trial by refusing to grant immunity to the witness he claims would support his justification defense is unavailing.

An immunity determination is subject to abuse of discretion review (*see* CPL 50.20; 50.30), and there is no indication in the record that the witness at issue ever sought immunity for her alleged role in the incident as a condition for testifying.

Moreover, the court properly denied defendant's request for a justification charge, since there was no reasonable view of the evidence, viewed in the light most favorable to defendant, to support either the objective or subjective aspects of this defense (*see People v Goetz*, 68 NY2d 96, 115 [1986]; *see People v Watts*, 57 NY2d 299, 301-302 [1982]).

Defendant's speedy trial motion was untimely, as it was made after verdict (CPL 210.20[2], CPL 210.20[1][g]; *People v Prosano*, 279 AD2d 329, 329 [1st Dept 2001], *lv denied* 96 NY2d 833 [2001]).

Were we to consider it on the merits, defendant's claim would fail, as the People established that, among other things, there was good cause for delay because the victim had received threats which gave him concern about his safety if he testified (*see People v Decker*, 13 NY3d 12, 15 [2009]; *People v Regan*, 39 NY3d 459, 465 [2023], *citing* *People v Taranovich*, 37 NY2d 442, 445 [1975]).

The trial court did not abuse its discretion in denying

defendant's motion, at sentencing, for new counsel, given the posture of the case and defendant's lack of evidence of specific lapses in counsel's representation *s* (see *People v O'Daniel*, 24 NY3d 134, 138 [2014]; *People v Scott*, 222 AD3d 663, 664-65 [2d Dept 2023]).

Finally, by failing to contest his criminal history, including the relevant periods of incarceration, defendant failed to preserve any *Erlinger* challenge (*People v Hernandez*, 43 NY3d 591, 597-598 [2025]).

We have considered defendant's remaining arguments and find them unavailing.

M-1467 — People v Joseph Urgitano

Motion by defendant to enlarge the record, denied.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 7, 2026

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.

PER CURIAM.

People v Urgitano - 2026 NY Slip Op 02884 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 Urgitano 2026 NY Slip Op 02884 May 7, 2026 Appellate Division, First 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 Joseph Urgitano, Defendant-Appellant. Decided and Entered: May 07, 2026 Ind No. 1561/16|Appeal No. 6554-6554A-M-1467|Case No. 2019-986 2024-06269| Before: Moulton, J.P., Gesmer, Higgitt, Michael, Chan, JJ. Law Office of Steven N. Preziosi P.C., New York (Stephen N. Preziosi of counsel), for appellant.

Darcel D. Clark, District Attorney, Bronx (Noah J. Chamoy of counsel), for respondent. [*1] Judgment, Supreme Court, Bronx County (James McCarty, J.), rendered November 7, 2018, convicting defendant, after a jury trial, of assault in the first degree, and sentencing him, as a second violent felony offender, to a term of 18 years, unanimously affirmed. Order, same court (Jeffrey Rosenblueth, J.) entered on or about September 13, 2024, which denied defendant's CPL 440.10 motion to vacate the judgment, unanimously affirmed.

Supreme Court correctly denied defendant's CPL 440.10 motion, as defendant received effective assistance of counsel under state and federal standards (see *People v Benevento*, 91 NY2d 708, 713-714 [1998]; *Strickland v Washington*, 466 US 668 [1984]).

In light of the overwhelming evidence of defendant's guilt, defendant has not established prejudice for purposes of a federal claim (*Strickland*, 466 US at 687) or for purposes of the "meaningful representation" standard that underlies a state claim (see *People v Stultz*, 2 NY3d 277, 283-284 [2004]). Trial counsel was not ineffective in failing to make a motion for a trial order of dismissal on the ground that the People failed to establish the serious physical injury element of assault in the first degree.

The medical evidence established that if left untreated, the victim could ultimately have died from the knife wounds (*People v Rudenko*, 151 AD3d 1084, 1084 [2d Dept 2017], lv denied 30 NY3d 953 [2017]). Additionally, the victim suffered substantial pain and required significant rehabilitation as a result (see *People v Wong*, 165 AD3d 468, 468 [1st Dept 2018], lv denied 32 NY3d 1116 [2018]).

The supervising doctor was properly called to testify about the nature and extent of the victim's injuries and, given his experience in trauma care, was qualified to render an opinion about the victim's likely prognosis.

Moreover, certain aspects of the medical records provided support for defendant's theory about the victim's condition at the time of the incident, so counsel's failure to object either to the records or the physician's testimony was not ineffective. [*2] Failing to move for a missing witness charge was not ineffective.

Under the circumstances, such an objection would have been futile given the unequivocal representation by counsel for that witness that she would invoke her Fifth Amendment privilege (see generally *People v Caban*, 5 NY3d 143, 152 [2005]).

The trial court properly allowed the victim to invoke his right to remain silent when asked, on cross-examination, about a pending but unrelated criminal matter. Therefore, defense counsel's failure to object to this ruling was not ineffective (see *People v Graham*, 201 AD3d 143, 152 [1st Dept 2021], lv denied 38 NY3d 950 [2022]).

Finally, defendant's claim that counsel was ineffective for failing to move into evidence certain video surveillance evidence lacks support in the record, as the video in question was part of a larger exhibit that was entered into evidence. Counsel cannot be faulted for failing to seek redundant admission of the same evidence.

We note also that the video evidence established that defendant was the aggressor, which contraindicates his claim of justification (see *People v Brown*, 33 NY3d 316, 320-321 [2019]).

Defendant's argument that the trial court and the People deprived him of his right to a fair trial by refusing to grant immunity to the witness he claims would support his justification defense is unavailing.

An immunity determination is subject to abuse of discretion review (see CPL 50.20; 50.30), and there is no indication in the record that the witness at issue ever sought immunity for her alleged role in the incident as a condition for testifying.

Moreover, the court properly denied defendant's request for a justification charge, since there was no reasonable view of the evidence, viewed in the light most favorable to defendant, to support either the objective or subjective aspects of this defense (see *People v Goetz*, 68 NY2d 96, 115 [1986]; see *People v Watts*, 57 NY2d 299, 301-302 [1982]). Defendant's speedy trial motion was untimely, as it was made after verdict (CPL 210.20[2], CPL 210.20[1][g]; *People v Prosano*, 279 AD2d 329, 329 [1st Dept 2001], lv denied 96 NY2d 833 [2001]).

Were we to consider it on the merits, defendant's claim would fail, as the People established that, among other things, there was good cause for delay because the victim had received threats which gave him concern about his safety if he testified (see *People v Decker*, 13 NY3d 12, 15 [2009]; *People v Regan*, 39 NY3d 459, 465 [2023], citing *People v Taranovich*, 37 NY2d 442, 445 [1975]).

The trial court did not abuse its discretion in denying defendant's motion, at sentencing, for new counsel, given the posture of the case and defendant's lack of evidence of specific lapses in counsel's representation s (see *People v O'Daniel*, 24 NY3d 134, 138 [2014]; *People v Scott*, 222 AD3d 663, 664-65 [2d Dept 2023]). [*3] Finally, by failing to contest his criminal history, including the relevant periods of incarceration, defendant failed to preserve any Erlinger challenge (*People v Hernandez*, 43 NY3d 591, 597-598 [2025]).

We have considered defendant's remaining arguments and find them unavailing. M-1467 — *People v Joseph Urgitano* Motion by defendant to enlarge the record, denied. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: May 7, 2026 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.