

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

People v. Gausney

2026 NY Slip Op 00205 (Supreme Court of the State of New York Appellate Division First Department 2026) ·
No. SCI No. 72686/23; Appeal No. 5600; Case No. 2023-04248 · Decided January 15, 2026

SUMMARY

The Appellate Division, First Department, modified Everett Gausney's conviction sentence for criminal sale of a controlled substance in the third degree. The court reduced probation from five years to three years, struck gang-related probation conditions and improperly imposed surcharges and fees, and otherwise affirmed the judgment.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Kennedy, J.P.; Gesmer, J.; Rodriguez, J.; Pitt-Burke, J.; Chan, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	January 15, 2026
DOCKET	SCI No. 72686/23; Appeal No. 5600; Case No. 2023-04248
DISPOSITION	other
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Supreme Court, New York County, convicting him upon his plea of criminal sale of a controlled substance in the third degree and sentencing him to five years of probation and ten days of community service.
STANDARD OF REVIEW	The court reviewed the sentence for excessiveness as a matter of discretion in the interest of justice and reviewed the challenged probation conditions under Penal Law § 65.10. Unpreserved facial challenges were not reviewed in the interest of justice.
PRECEDENTIAL VALUE	Published intermediate appellate opinion
PARTIES	Everett Gausney v. The People of the State of New York

TOPICS

- probation
- sentencing
- criminal procedure
- appellate procedure
- preservation of error

PRACTICE AREAS

criminal law

criminal procedure

sentencing

probation

appellate practice

QUESTIONS PRESENTED

1. Whether defendant's challenges to certain probation conditions survived his valid appeal waiver and could be raised without preservation.
2. Whether the probation condition requiring defendant to avoid injurious or vicious habits, refrain from unlawful or disreputable places, and not consort with disreputable people was reasonably necessary under Penal Law § 65.10.
3. Whether the gang-related probation condition was reasonably related to defendant's rehabilitation or necessary to ensure that he would lead a law-abiding life.
4. Whether the surcharge and other fees were properly imposed as conditions of probation.
5. Whether the five-year term of probation was excessive.

HOLDINGS

1. Challenges to certain probation conditions under Penal Law § 65.10(1) survive a valid appeal waiver and do not require preservation.
2. The court properly imposed the condition requiring defendant to avoid injurious or vicious habits, refrain from frequenting unlawful or disreputable places, and not consort with disreputable people.
3. The probation condition prohibiting gang paraphernalia and association with gangs or gang members had to be struck.
4. The surcharge and other fees improperly imposed as conditions of probation had to be struck because they were not reasonably related to defendant's rehabilitation or necessary to ensure that he would lead a law-abiding life.
5. The five-year probation sentence was excessive to the extent indicated and was reduced to three years of probation.
6. Defendant's facial challenges were unpreserved, and the court declined to review them in the interest of justice.

KEY QUOTATIONS

"As a matter of discretion in the interest of justice, the sentence is excessive to the extent indicated." (*1)

*"There is no evidence that defendant's actions were connected to gang activity, or that he had a history of gang membership; thus, the condition "was not reasonably related to defendant's rehabilitation, or necessary to ensure that he will lead a law-abiding life"" (*1)*

FACTUAL BACKGROUND

Defendant pleaded guilty to criminal sale of a controlled substance in the third degree. The record showed that he possessed cocaine for financial gain and admitted to the Probation Department that he used marijuana daily.

There was no evidence that his conduct was connected to gang activity or that he had a history of gang membership.

PROCEDURAL HISTORY

The Supreme Court, New York County, rendered judgment on August 2, 2023, following defendant's plea and sentencing proceedings. On appeal, the First Department modified the sentence in the interest of justice by reducing probation from five years to three years and striking the gang-related probation condition and the surcharge and fees imposed as probation conditions; it otherwise affirmed.

DISPOSITION

other

CASES CITED

- People v. Alvarez, 233 AD3d 619, 620 (1st Dept 2024), lv denied 43 NY3d 961 (2025)
- People v. Lombard, 241 AD3d 1126, 1126 (1st Dept 2025)
- People v. Lowndes, 239 AD3d 574, 575 (1st Dept 2025), lv denied 44 NY3d 012 (2025)
- People v. Vasquetelles, 241 AD3d 1208, 1209 (1st Dept 2025)
- People v. Wood, 239 AD3d 484, 484 (1st Dept 2025)
- People v. Percy, 234 AD3d 619, 620 (1st Dept 2025)
- People v. Cabrera, 41 NY3d 35, 42-51 (2023)

OPINION

PER CURIAM.

People v Gausney (2026 NY Slip Op 00205) People v Gausney 2026 NY Slip Op 00205 Decided on January 15, 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 15, 2026 Before: Kennedy, J.P., Gesmer, Rodriguez, Pitt-Burke, Chan, JJ. SCI No. 72686/23|Appeal No. 5600|Case No. 2023-04248| [*1]The People of the State of New York, Respondent, v Everett Gausney, Defendant-Appellant.?

Jenay Nurse Guilford, Center for Appellate Litigation, New York (Emilia King-Musza of counsel), for appellant. Alvin L. Bragg, Jr., District Attorney, New York (Nathan Morgante of counsel), for respondent. Judgment, Supreme Court, New York County (Laurie Peterson, J., at plea; Josh Hanshaft, J., at sentencing), rendered August 2, 2023, convicting defendant of criminal sale of a controlled substance in the third degree, and sentencing him to 5 years of probation and 10 days of community service, unanimously modified, on the law and as a matter of discretion in the interest of justice, to the extent of reducing the sentence to a term of three years' probation and striking the

conditions of probation requiring defendant to "refrain from wearing or displaying gang paraphernalia and having any association with a gang or members of a gang if directed by the Department of Probation" and to pay the surcharge and fees imposed at sentencing, and otherwise affirmed.

As a matter of discretion in the interest of justice, the sentence is excessive to the extent indicated. Defendant's challenges to certain conditions of probation under Penal Law § 65.10(1) survive his valid appeal waiver and do not require preservation (see *People v Alvarez*, 233 AD3d 619, 620 [1st Dept 2024], lv denied 43 NY3d 961 [2025]). Regarding the condition of probation requiring defendant to "[a]void injurious or vicious habits; refrain from frequenting unlawful or disreputable places; and... not consort with disreputable people," the court providently imposed this condition, as it is "reasonably necessary to [e]nsure that the defendant will lead a law-abiding life or to assist him to do so," given that he was found in possession of cocaine for financial gain and admitted to the Probation Department that he used marijuana on a daily basis (Penal Law §§ 65.10[1], [2]; see *People v Lombard*, 241 AD3d 1126, 1126 [1st Dept 2025]; *People v Lowndes*, 239 AD3d 574, 575 [1st Dept 2025], lv denied 44 NY3d 012 [2025]).

However, the probation condition requiring defendant to "[r]efrain from wearing or displaying gang paraphernalia and having any association with a gang or members of a gang if directed by the Department of Probation" must be struck. There is no evidence that defendant's actions were connected to gang activity, or that he had a history of gang membership; thus, the condition "was not reasonably related to defendant's rehabilitation, or necessary to ensure that he will lead a law-abiding life" (see e.g. *People v Vasquetelles*, 241 AD3d 1208, 1209 [1st Dept 2025]).

Furthermore, to the extent the court improperly imposed at sentencing payment of the surcharge and other fees as a condition of defendant's probation, we strike this condition as not reasonably related to his rehabilitation or necessary to ensure that he will lead a law-abiding life (see *People v Wood*, 239 AD3d 484, 484 [1st Dept 2025]; *People v Percy*, 234 AD3d 619, 620 [1st Dept 2025]).

We note that the People do not oppose this relief Defendant's facial challenges are unpreserved (see *People v Cabrera*, 41 NY3d 35, 42-51 [2023]), and we decline to review them in the interest of justice. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: January 15, 2026