

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT**

People v. Session

2026 NY Slip Op 02749 · No. 199 KA 24-01666 · Decided May 1, 2026

SUMMARY

The New York Appellate Division, Fourth Department, unanimously affirmed a judgment convicting Kyle Session, upon his guilty plea, of criminal sale of a controlled substance in the third degree. The court rejected his ineffective-assistance claim based on counsel's failure to seek judicial diversion, concluding that counsel cannot be ineffective for failing to make an application or argument with little or no chance of success.

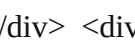
OPINION

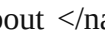
People v. Session 2026 NY Slip Op 02749

PER CURIAM.

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2026 NY Slip Op 02749
May 1, 2026
Appellate Division, Fourth Department
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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

v

KYLE SESSION, DEFENDANT-APPELLANT.

Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
Decided on May 1, 2026
199 KA 24-01666
Present: Lindley, J.P., Bannister, Greenwood, Nowak, And Hannah, JJ.

DAVID P. ELKOVITCH, AUBURN, FOR DEFENDANT-APPELLANT.

BRITTANY GROME ANTONACCI, DISTRICT ATTORNEY, AUBURN (CHRISTOPHER T. VALDINA OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Cayuga County Court (Thomas G. Leone, J.), rendered January 26, 2023. The

judgment convicted defendant, upon a plea of guilty, of criminal sale of a controlled substance in the third degree. </p> <p></p>[*1] <p>It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.</p> <p>Memorandum: On appeal from a judgment convicting him, upon his plea of guilty, of criminal sale of a controlled substance in the third degree (Penal Law § 220.39), defendant contends that he was denied effective assistance of counsel based on his attorney's failure to file an application requesting judicial diversion to a substance abuse treatment program pursuant to CPL 216.05. Even assuming, arguendo, that defendant's contention survives his guilty plea (<i>see People v Clark</i>, 191 AD3d 1485, 1486 [4th Dept 2021], <i>lv denied</i> 37 NY3d 954 [2021]; <i>People v Glowacki</i>, 159 AD3d 1585, 1586 [4th Dept 2018], <i>lv denied</i> 31 NY3d 1117 [2018]), we reject that contention inasmuch as "[t]here can be no denial of effective assistance of trial counsel arising from counsel's failure to 'make a motion or argument that has little or no chance of success' " (<i>People v Caban</i>, 5 NY3d 143, 152 [2005]).</p> <p>Entered: May 1, 2026</p> <p>Ann Dillon Flynn</p> <p>Clerk of the Court</p> </div> <div> <footer> <div> <p>Court Decisions</p> All Court Decisions Official Reports Service Bound Volumes Decision Search </div> <div> <p>Resources</p> RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index </div> <div> <p>About</p> About the Law Reporting Bureau About our Operations Contact Us Twitter </div> <div> <p>Quick Contact Info</p> <p>17 Lodge Street</p> <p>Albany, NY 12207</p> <p>Phone: (518) 453-6900</p> </div> </footer> </div> <div> <p>Links to or from other sites do not signify endorsement or relationship with them.</p> </div> </div>

PER CURIAM.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

v KYLE SESSION, DEFENDANT-APPELLANT. Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department Decided on May 1, 2026 199 KA 24-01666 Present: Lindley, J.P., Bannister, Greenwood, Nowak, And Hannah, JJ. DAVID P. ELKOVITCH, AUBURN, FOR DEFENDANT-APPELLANT. BRITTANY GROME ANTONACCI, DISTRICT ATTORNEY, AUBURN (CHRISTOPHER T. VALDINA OF COUNSEL), FOR RESPONDENT. Appeal from a judgment of the Cayuga County Court (Thomas G. Leone, J.), rendered January 26, 2023. The judgment convicted defendant, upon a plea of guilty, of criminal sale of a controlled substance in the third degree. [*1] It is hereby ORDERED that the judgment so appealed from is unanimously affirmed. Memorandum: On appeal from a judgment convicting him, upon his plea

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PER CURIAM.

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