

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

People v. Fowler

2025 NY Slip Op 07351 (N.Y. Ct. App. 2025) · No. CR-24-1564 · Decided December 31, 2025

SUMMARY

The Appellate Division, Third Department reversed an order denying Joseph Fowler's CPL article 440 motion to vacate his judgment of conviction without a hearing. The court held that the County Court failed to address the People's argument that Fowler's jurisdictional challenge to the superior court information was procedurally barred under CPL 440.10 (3) (c), and remitted the matter for consideration of that issue.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Aarons, J.; Garry, P.J.; Pritzker, J.; Powers, J.; Corcoran, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	December 31, 2025
DOCKET	CR-24-1564
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal by permission from an order of the County Court of Rensselaer County denying defendant's second CPL article 440 motion to vacate his judgment of conviction without a hearing.
STANDARD OF REVIEW	The Appellate Division's review power does not extend to issues not ruled upon by the trial court; the matter was remitted because County Court did not address the People's CPL 440.10(3)(c) argument.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Joseph Fowler v. The People of the State of New York

TOPICS

- post-conviction relief
- state post-conviction relief
- appellate procedure
- preservation of error
- criminal procedure

PRACTICE AREAS

criminal procedure

post-conviction relief

appellate procedure

QUESTIONS PRESENTED

1. Whether the Appellate Division could decide the People's argument that defendant's jurisdictional challenge was procedurally barred under CPL 440.10(3)(c) when County Court had not ruled on that argument.
2. Whether procedural bars under CPL 440.10 apply to claims alleging jurisdictional defects.

HOLDINGS

1. The Appellate Division could not determine the procedural-bar issue because its review power does not extend to issues not ruled upon by the trial court. The matter therefore had to be remitted to County Court for consideration of the issue.
2. Procedural bars to relief under CPL 440.10 are applicable to claims alleging jurisdictional defects.

KEY QUOTATIONS

*“Our review power does not extend to issues not ruled upon by the trial court” (*2)*

*“the procedural bars to relief under CPL 440.10 are applicable to jurisdictional defects” (*2)*

FACTUAL BACKGROUND

In 2000, defendant was charged with first-degree rape based on an allegation that he forcibly engaged in sexual intercourse with a 15-year-old girl. Pursuant to a plea agreement, he waived indictment and pleaded guilty under a superior court information charging first-degree sexual abuse, as well as to two burglary counts in a separate indictment. Years later, defendant challenged his conviction and sentence through CPL article 440 motions, including a claim that the superior court information was jurisdictionally defective because the charged offense had not been held for the grand jury and was not a lesser included offense of the charged rape offense.

PROCEDURAL HISTORY

Defendant pleaded guilty pursuant to a plea agreement to sexual abuse in the first degree under a superior court information and to two counts of burglary in the second degree, receiving concurrent prison terms. After later proceedings concerning sex-offender classification and postrelease supervision, defendant filed a 2019 CPL article 440 motion that resulted in reimposition of the original sentence without postrelease supervision. In 2024, he filed a second CPL article 440 motion arguing that the superior court information was jurisdictionally defective. County Court denied the motion on the merits without addressing the People's argument that CPL 440.10(3)(c) procedurally barred the claim. The Appellate Division reversed and remitted for consideration of that procedural-bar issue.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the County Court of Rensselaer County for consideration of whether defendant's jurisdictional claim is procedurally barred by CPL 440.10(3)(c), and for further proceedings not inconsistent with the Appellate Division's decision.

CASES CITED

- People v LaFontaine, 92 NY2d 470, 473-474 [1998]
- People v Regan, 196 AD3d 735, 742 [3d Dept 2021], revd on other grounds 39 NY3d 459 [2023]
- People v Drayton, 189 AD3d 1888, 1892 [3d Dept 2020], lv denied 36 NY3d 1119 [2021]
- People v Cuadrado, 9 NY3d 362, 365 [2007]

OPINION

PER CURIAM.

People v Fowler (2025 NY Slip Op 07351) People v Fowler 2025 NY Slip Op 07351 Decided on December 31, 2025 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:December 31, 2025 CR-24-1564 [*1]The People of the State of New York, Respondent, v Joseph Fowler, Appellant.

Calendar Date:November 19, 2025 Before:Garry, P.J., Aarons, Pritzker, Powers and Corcoran, JJ. Hug Law PLLC, Albany (Matthew C. Hug of counsel), for appellant. Mary Pat Donnelly, District Attorney, Troy (Melissa K. Swartz of Cambareri & Brenneck, Syracuse, of counsel), for respondent. Aarons, J. Appeal, by permission, from an order of the County Court of Rensselaer County (Debra Young, J.), entered August 30, 2024, which denied defendant's motion pursuant to CPL 440.10 to vacate the judgment convicting him of the crime of sexual abuse in the first degree, without a hearing.

In November 2000, defendant was charged by felony complaint with rape in the first degree (see Penal Law former § 130.35 [1]), based upon an allegation that in September 2000, at 18 years old, he engaged in sexual intercourse by forcible compulsion with a 15-year-old girl. Pursuant to a plea agreement, he waived indictment and consented to be prosecuted by a superior court information (hereinafter SCI) charging him with sexual abuse in the first degree (see Penal Law § 130.65 [1]).

Defendant pleaded guilty to the SCI charging him with sexual abuse in the first degree as well as to a separate indictment charging him with two counts of burglary in the second degree. Defendant waived his right to appeal and was sentenced, in accordance with the agreement, to concurrent prison terms of 3½ years on each charge. Defendant did not pursue a direct appeal.

In April 2004, at defendant's Sex Offender Registration Act hearing, wherein defendant's counsel waived defendant's right to appear, County Court (Hummel, J.) classified defendant as a risk level

three sex offender. Further, the court acknowledged that it initially erred in sentencing defendant by failing to include a term of postrelease supervision (see Penal Law § 70.45 [1]), and thereafter sentenced defendant, in absentia, to 2½ years of postrelease supervision.

In June 2019, defendant filed a motion pursuant to CPL article 440 to vacate the judgment of conviction, arguing that he did not receive the effective assistance of counsel because he did not intend to waive his presence at resentencing and he was never informed by his former counsel that he would be required to serve a period of postrelease supervision (see CPL 440.10 [1] [h]).

County Court (Young, J.) partially granted the motion, finding that although defendant's former counsel provided meaningful representation, defendant's fundamental right to be present at sentencing warranted reimposition of the originally imposed sentence, without any term of postrelease supervision, in the interest of justice.

In July 2024, defendant again moved pursuant to CPL article 440 to vacate the judgment of conviction, arguing, as relevant here, that the SCI charging defendant with sexual abuse in the first degree was jurisdictionally defective because it did not accuse an offense that had been held for grand jury or a lesser included offense thereof. County Court denied defendant's motion without a hearing, summarily ruling that vacatur was not warranted in light of defendant's admission to the elements of sexual abuse in the first degree during his plea hearing, despite noting that sexual abuse in the first degree is not a lesser included offense of rape in the first degree.

Defendant[*2], by permission, appeals. Among the arguments advanced by the People in opposition to defendant's second CPL article 440 motion was that upon his previous motion to County Court, "defendant was in a position adequately to raise the ground or issue underlying the present motion but did not do so" (CPL 440.10 [3] [c]).

In denying defendant's motion, the court did not address the merits of the People's argument that defendant's jurisdictional claim is procedurally barred by CPL 440.10 (3) (c). Our review power does not extend to issues not ruled upon by the trial court (see CPL 470.15 [1]; *People v LaFontaine*, 92 NY2d 470, 473-474 [1998]; see also *People v Regan*, 196 AD3d 735, 742 [3d Dept 2021], revd on other grounds 39 NY3d 459 [2023]; *People v Drayton*, 189 AD3d 1888, 1892 [3d Dept 2020], lv denied 36 NY3d 1119 [2021]).

Contrary to defendant's contention in his reply brief, the procedural bars to relief under CPL 440.10 are applicable to jurisdictional defects (cf. *People v Cuadrado*, 9 NY3d 362, 365 [2007]). The matter must therefore be remitted for consideration of the issue. Garry, P.J. Pritzker, Powers and Corcoran, JJ., concur. ORDERED that the order is reversed, on the law, and matter remitted to the County Court of Rensselaer County for further proceedings not inconsistent with this Court's decision.

PER CURIAM.

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Calendar Date: November 19, 2025 Before: Garry, P.J., Arons, Pritzker, Powers and Corcoran, JJ. Hug Law PLLC, Albany (Matthew C. Hug of counsel), for appellant. Mary Pat Donnelly, District Attorney, Troy (Melissa K. Swartz of Cambareri & Brenneck, Syracuse, of counsel), for respondent. Arons, J. Appeal, by permission, from an order of the County Court of Rensselaer County (Debra Young, J.), entered August 30, 2024, which denied defendant's motion pursuant to CPL 440.10 to vacate the judgment convicting him of the crime of sexual abuse in the first degree, without a hearing.

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