

CRIMINAL

APPELLATE DIVISION, FIRST DEPARTMENT

People v Luke | January 21, 2025

BATSON | FAILURE TO CONDUCT INQUIRY | HELD IN ABEYANCE & REMANDED | DISSENT

Appellant appealed from a New York County Supreme Court judgment convicting him of third-degree burglary and sentencing him to 2 ½ to 5 years' incarceration. The First Department held the appeal in abeyance and remanded for the lower court to conduct a proper *Batson* inquiry. The trial court "bypassed the protocol entirely by interjecting itself into defendant's *Batson* objection, misapprehending its timeliness, improperly focusing on potential relief, and denying defendant an opportunity to present his full challenge." Counsel's failure to request a particular remedy was not dispositive because the court should have first ruled on the challenge before considering the appropriate remedy. The majority invoked its interest of justice jurisdiction to reach the unpreserved challenge, as it has in other cases, based on the merit of the defense's claim: the prosecution used peremptory strikes at the conclusion of round one of jury selection to dismiss four jurors, three of whom were Black and one of whom "appeared to be...Hispanic." The majority also emphasized the importance of correcting even unpreserved *Batson* challenges: "[i]f this error is left unchecked, *Batson* and its progeny become a metaphorical dog with no bite." The dissent would have held that appellant's *Batson* challenge was unpreserved, and interest of justice review unwarranted, since defense counsel raised a *Batson* objection but failed to request a remedy. The Legal Aid Society of NYC (Mariel R. Stein, of counsel) represented Luke.

[People v Luke \(2025 NY Slip Op 00297\)](#)

[Oral Argument \(starts at 01:08:17\)](#)

People v Dupree | January 14, 2025

GUILTY PLEA | FAILURE TO INQUIRE INTO STATEMENTS TO ENSURE VOLUNTARINESS | REVERSED

Appellant appealed from a New York County Supreme Court judgment convicting him of first-degree manslaughter. The First Department vacated the plea due to Supreme Court's failure to inquire into the prosecutor's sentencing statements relating to appellant's suggestions in the PSR that the shooting was justified and he was intoxicated during the crime. "Although there is no statewide consensus on the issue, in the First Department" the plea court's obligation to inquire extends to comments made during the plea colloquy or at sentencing that undermine the plea's voluntariness. The court noted

that the Fourth Department reached a different conclusion in [People v Brown](#), 204 AD3d 1519 [4th Dep't 2022]. While the plea court does not have an obligation to inquire about out-of-court statements, even those contained in a pre-sentence report, statements made in open court that cast doubt on the plea's voluntariness must be explored. Because at sentencing the prosecutor brought up appellant's statements indicating that he may have misunderstood the law, the court should have conducted an inquiry. The Legal Aid Society of NYC (Hilary Dowling, of counsel) represented Dupree.

[People v Dupree \(2025 NY Slip Op 00199\)](#)

[Oral Argument \(starts at 01:42:45\)](#)

People v Amparo | January 23, 2025

IMPROPER PROBATION CONDITION | INVALID APPEAL WAIVER | MODIFIED

Appellant appealed from a Bronx County Supreme Court judgment convicting him of third-degree auto stripping. The First Department struck the probation condition requiring appellant to consent to searches for drugs and weapons. This condition was not reasonably related to rehabilitation because the crime did not involve drugs or weapons. While this claim would survive even a valid waiver of appeal, here the waiver was inadequate. Supreme Court did not explain the nature of the appellate rights being forfeited, that they were separate and distinct from those automatically forfeited by guilty plea, or that limited claims would survive the waiver. The written waiver could not substitute for an on-record explanation of the right to appeal. Center for Appellate Litigation (David Klem, of counsel) represented Amparo.

[People v Amparo \(2025 NY Slip Op 00389\)](#)

APPELLATE DIVISION, SECOND DEPARTMENT

People v Martinez | January 22, 2025

DVSJA | TEMPORAL NEXUS | SUMMARY DENIAL AFFIRMED

Appellant appealed from a Westchester County Supreme Court order summarily denying his resentencing motion pursuant to CPL § 440.47, the retroactive portion of the Domestic Violence Survivors Justice Act. The Second Department modified the order by making the denial without prejudice and otherwise affirmed. The Second Department determined that Supreme Court properly denied the motion without a hearing because appellant failed to present sufficient corroborating evidence that he was a victim of domestic violence at the time he committed the robbery in question. Notably, the Second Department did not address whether it had jurisdiction to hear this appeal from a summary denial of a DVSJA resentencing motion, since the lower court's order had *denied* the motion. In contrast, in [People v Melissa OO.](#), 2024 NY Slip Op 05920 [3d Dep't 2024], the Third Department dismissed a similar appeal where the lower court had styled its denial of a hearing as a *dismissal*, on the basis that "there is no statutory authority" to appeal from an "order dismissing [an] application for resentencing under the DVSJA without prejudice." *Martinez* and *Melissa OO.* illustrate a growing split in the Appellate Division on the appealability of summary denials/dismissals of DVSJA resentencing motions.

[People v Martinez \(2025 NY Slip Op 00338\)](#)

People v Serrano | January 22, 2025

30.30 | DEFICIENT COC | INVALID APPEAL WAIVER | DISMISSED

Appellant appealed from a Queens County Supreme Court judgment convicting him of second-degree assault, following his guilty plea. The Second Department granted appellant's CPL § 30.30(1)(a) motion and dismissed the indictment. A 30.30 denial is reviewable on appeal despite a plea of guilty, and the appeal waiver here was invalid because the court's oral colloquy mischaracterized the appellate rights waived as encompassing a challenge to the plea's voluntariness. The prosecution's statement of trial readiness was illusory because its COC failed to show the prosecution exercised due diligence and made reasonable inquiries to ascertain the existence of material subject to discovery prior to its filing. The prosecution conceded on appeal that the "line of duty" paperwork pertaining to the complainant-officer's alleged injuries would be material and did not dispute that the paperwork existed. Appellant's motion should have been granted for exceeding the applicable statutory period. Appellate Advocates (Maisha Kamal and Joshua Levine, of counsel) represented Serrano.

[People v Serrano \(2025 NY Slip Op 00338\)](#)

[Oral Argument \(starts at 00:27:06\)](#)

People v Harris | January 22, 2025

PREDICATE SENTENCING | OUT-OF-STATE CONVICTION | VACATED & REMITTED FOR RESENTENCING

Appellant appealed from a Kings County Supreme Court judgment convicting him of first-degree attempted assault and two counts of attempted aggravated assault upon a police officer and related charges. The Second Department vacated appellant's adjudication as a second felony offender and remitted for resentencing. Appellant was improperly sentenced as a second felony offender, because, as conceded by the prosecution, his prior robbery conviction in Louisiana did not constitute a felony in New York for purposes of enhanced sentencing. Appellate Advocates (Cynthia Colt, of counsel) represented Harris.

[People v Harris \(2025 NY Slip Op 00331\)](#)

[Oral Argument \(starts at 00:36:30\)](#)

People v Beaubrun | January 22, 2025

People v Newman | January 22, 2025

OOP | SURCHARGES & FEES | MODIFIED | OOP VACATED & REMITTED AS TO DURATION

Appellants appealed from separate Kings County Supreme Court judgments convicting them following their guilty pleas. The Second Department affirmed Beaubrun's conviction for second-degree burglary and Newman's conviction for second-degree attempted assault but vacated the durational portions of appellants' OOPs and remitted for new determinations as to duration. The duration of the OOPs exceeded the statutory maximum and failed to account for appellants' jail-time. Preservation was not required because appellants had no practical ability to timely object where the courts did not announce the durations of the OOPs at the plea or sentencing proceedings. In *Beaubrun*, the Second Department also vacated the mandatory surcharge and fees in the interest of justice and upon the prosecution's consent. Appellate Advocates (Brian Perbix, of counsel) represented Beaubrun; Appellate Advocates (Russ Altman-Merino, of counsel) represented Newman.

[People v Beaubrun \(2025 NY Slip Op 00328\)](#)

[People v Newman \(2025 NY Slip Op 00335\)](#)

People v Lora | January 22, 2025

INVALID WAIVER OF APPEAL | SENTENCE NOT EXCESSIVE | AFFIRMED

Appellant appealed from a Queens County Supreme Court judgment convicting him of second-degree CPW following a guilty plea. The Second Department found the appeal waiver invalid because the lower court's oral colloquy erroneously suggested that the waiver precluded appellate review of the voluntariness of the plea and the jurisdiction of the court and failed to adequately explain the right to assigned appellate counsel. Where the court did not ensure appellant understood the contents of the written waiver, and this was appellant's first felony conviction, the written waiver did not cure the deficient oral colloquy. However, appellant's sentence was not excessive. The Legal Aid Society of NYC (Robin Richardson, of counsel) represented Lora.

[People v Lora \(2025 NY Slip Op 00332\)](#)

People v Diaz | January 22, 2025

People v Rios | January 22, 2025

People v Walker | January 22, 2025

INVALID WAIVERS OF APPEAL | SENTENCES NOT EXCESSIVE | AFFIRMED

Appellants appealed from separate Supreme Court judgments sentencing them following their guilty pleas. The Second Department found their appeal waivers invalid. In *Diaz* and *Walker*, the courts' oral colloquies mischaracterized the appellate rights relinquished as encompassing the loss of the right to counsel and poor person's relief; and the execution of the written waivers did not cure the deficient oral colloquies. Furthermore, in *Walker*, the written waiver did not include clarifying language regarding which issues survived the appeal waiver and did not inform appellant of her right to counsel and poor person relief. In *Diaz* and *Rios*, the courts failed to discuss the waivers until after appellants had admitted their guilt as part of the plea agreements. However, none of appellants' sentences were determined to be excessive. Appellate Advocates (Alexa Askari, Maisha Kamal and Russ Altman-Merino, of counsel) represented Diaz, Rios, and Walker, respectively.

[People v Diaz \(2025 NY Slip Op 00330\)](#)

[People v Rios \(2025 NY Slip Op 00337\)](#)

[People v Walker \(2025 NY Slip Op 00340\)](#)

APPELLATE DIVISION, THIRD DEPARTMENT

People v Loadholt | January 23, 2025

INVALID WAIVER OF APPEAL | AFFIRMED

Appellant appealed from a Sullivan County Court judgment convicting him of third-degree CPCS and second-degree perjury based on his guilty plea. He was sentenced to consecutive terms of 7 ½ years' imprisonment and 3 years' PRS on the drug charge and 1 ½ to 3 years' imprisonment on the perjury charge. The Third Department affirmed. The appellant's waiver of appeal was invalid. The written waiver was overly broad and purported to completely bar appellate review. The oral colloquy was insufficient to cure

the deficiencies. However, the sentence was not unduly harsh or severe. Jane M. Bloom represented Loadholt.

[People v Loadholt \(2025 NY Slip Op 00354\)](#)

TRIAL COURTS

People v Butler | 2025 WL 272360

SPEEDY TRIAL | DISCOVERY | FAILURE TO DISCLOSE COMPLAINANT'S OPEN CASE | DISMISSED

Butler was charged in Kings County Criminal Court with third-degree assault and related charges. Criminal Court granted the defense motion to dismiss on speedy trial grounds because the prosecution failed to disclose that the complainant had a pending open case. There was no dispute that disclosure of this information was mandatory. The prosecution did not exercise due diligence by merely requesting the complainant's RAP sheet. The open case would have been obvious to a reasonably diligent prosecutor. Claiming an accidental oversight without further explanation was insufficient to demonstrate due diligence. The prosecution also took a month to file a supplemental COC. "This sluggish response, coupled with other factors, evinces a clear lack of due diligence." As the COC and SOR were illusory, the speedy trial clock did not stop, requiring dismissal. Brooklyn Defender Services (Owen Senders, of counsel) represented Butler.

[People v Butler \(2025 NY Slip 50056\(U\)\)](#)

FAMILY

APPELLATE DIVISION, SECOND DEPARTMENT

Matter of Camiyah B. | January 22, 2025

ICPC | RELOCATION GRANTED | AFFIRMED

Appellant parent appealed from a Queens County Family Court order in an Article 10 proceeding that granted the nonparty SCO Family Services' application to permit the foster caregiver grandparent to relocate with the subject child to Texas without a hearing. The Second Department affirmed, rejecting appellant's arguments that, pursuant to SSL § 374-a(1)(art III)(b), the agency's interstate relocation application should not have been granted prior to Texas sending a written notification to the agency that the proposed placement did "not appear to be contrary to the interests of the child"; and that the Family Court failed to consider the child's best interests. The Second Department reasoned that, pursuant to ICPC Regulation No. 1, the Family Court did not err in granting the application because the subject child was already placed with the foster caregiver, and although Texas had not yet ruled on the timely application, it was providing ongoing supervision. Further, Family Court's determination that it was in the child's best interests to relocate was supported by a sound and substantial basis in the record given their extensive knowledge of the case history and clear articulation of the undisputed facts that supported said determination.

[Matter of Camiyah B. \(2025 NY Slip Op 00319\)](#)

[Oral Argument \(starts at 00:21:53\)](#)

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