State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: October 1, 2026

CR-22-1908
CR-22-1930

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,
v
MEMORANDUM AND ORDER

CHRISTOPHER P.,
Appellant.

Calendar Date: September 10, 2026

Before: Aarons, J.P., Reynolds Fitzgerald, Fisher, Powers and Mackey, JJ.

Rosenberg Law Firm, Brooklyn (*Jonathan Rosenberg* of counsel), for appellant.

Mary Pat Donnelly, District Attorney, Troy (*Michael Allain* of counsel), for respondent.

Fisher, J.

Appeals (1) from a judgment of the County Court (Youth Part) of Rensselaer County (Jennifer Sober, J.), rendered August 17, 2022, convicting defendant upon his plea of guilty of the crime of criminal possession of a weapon in the second degree, and (2) from a judgment of said court, rendered August 17, 2022, convicting defendant upon his plea of guilty of the crime of attempted robbery in the second degree.

Defendant was charged in an indictment with attempted murder in the second degree and criminal possession of a weapon in the second degree (hereinafter the first indictment), stemming from allegations that, in March 2021, defendant, while acting in

concert with another person, fired several rounds from a loaded handgun into a residence striking the young victim in the back and paralyzing him. A second indictment charged defendant with robbery in the second degree and assault in the third degree, stemming from defendant, acting in concert with another person, forcibly stealing property from a victim in July 2021, during which that victim sustained physical injuries. In a global disposition resolving the two indictments as well as a third pending indictment, defendant pleaded guilty to criminal possession of a weapon in the second degree as charged in the first indictment and to a reduced charge of attempted robbery in the second degree in connection with the second indictment, and he agreed to waive his right to appeal. Although defendant was 18 years old at the time he committed the underlying offenses, County Court denied youthful offender adjudication for either conviction and sentenced him to a prison term of 15 years, to be followed by five years of postrelease supervision, on the weapons conviction and a consecutive sentence of three years in prison, to be followed by three years of postrelease supervision, on the attempted robbery conviction. Defendant appeals both convictions.

Defendant contends that his pleas are involuntary because County Court's statement that, in the event he rejected the plea offer, his options would be to either plead guilty to the full indictments or go to trial coerced him into accepting the plea offer. Although not precluded by his unchallenged appeal waiver (*see People v Host*, 248 AD3d 1505, 1505 [3d Dept 2026]; *People v Robles*, 243 AD3d 1017, 1018-1019 [3d Dept 2025]), defendant's challenges to the voluntariness of the pleas are unpreserved for our review as the record does not reflect that he made an appropriate postallocution motion, despite ample time to do so (*see People v Lopez*, 8 NY3d 541, 545 [2007]; *People v Ellington*, 248 AD3d 1566, 1567 [3d Dept 2026]). Further, defendant made no statements during either plea colloquy that negated an element of the crimes or cast significant doubt on his guilt so as to implicate the narrow exception to the preservation rule (*see People v Rios*, ___ NY3d ___, ___, 2026 NY Slip Op 00963, *3 [2026]; *People v Guerin*, 248 AD3d 1500, 1500 [3d Dept 2026], *lv denied* 45 NY3d 1038 [2026]). We further decline defendant's invitation to take corrective action in the interest of justice. Any pressure defendant felt upon the court informing him of, among other things, the consequences of rejecting the plea offer "amounted to no more than the type of situational coercion faced by many defendants who are offered a plea deal" (*People v Robles*, 243 AD3d at 1019 [internal quotation marks, brackets and citations omitted]; *see People v Rose*, 238 AD3d 1323, 1325 [3d Dept 2025], *lv denied* 44 NY3d 984 [2025]). Furthermore, the record demonstrates that defendant's plea was a "choice among alternative courses of action" after being provided ample time to consult with defense counsel (*People v Conceicao*, 26

NY3d 375, 384 [2015]; *see People v Robles*, 243 AD3d at 1019; *People v Arlt*, 219 AD3d 986, 989 [3d Dept 2023], *lv denied* 40 NY3d 996 [2023]).

Defendant also contends that County Court erred in determining whether youthful offender adjudication was available in connection with his conviction of criminal possession of a weapon in the second degree – an armed felony offense – without first considering whether he was an eligible youth in accordance with the criteria set forth in CPL 720.10 (3). We are constrained to agree. Initially, regardless of the validity of defendant's appeal waiver, defendant's contention that the court did not consider youthful offender status is not foreclosed (*see People v Pacherille*, 25 NY3d 1021, 1023 [2015]; *People v Jones*, 219 AD3d 1610, 1612 [3d Dept 2023]; *People v Jones*, 182 AD3d 698, 700 [3d Dept 2020]). "[W]hen a defendant has been convicted of an armed felony . . . and the only barrier to his or her youthful offender eligibility is that conviction, the court is required to determine on the record whether the defendant is an eligible youth by considering the presence or absence of the factors set forth in CPL 720.10 (3). The court must make such a determination on the record 'even where the defendant has failed to ask to be treated as a youthful offender, or has purported to waive his or her right to make such a request' pursuant to a plea bargain" (*People v Middlebrooks*, 25 NY3d 516, 527-528 [2015] [brackets omitted], quoting *People v Rudolph*, 21 NY3d 497, 499 [2013]; *accord People v Colon*, 173 AD3d 1255, 1256 [3d Dept 2019]; *see People v Lofton*, 29 NY3d 1097, 1098 [2017]; *People v Jones*, 219 AD3d at 1612).

Defendant was 18 years old at the time he committed the underlying offense of criminal possession of a weapon in the second degree. Despite that underlying conviction being an armed felony offense, he was not statutorily precluded from being considered an eligible youth (*see* CPL 720.10 [3]). Accordingly, the threshold determination became whether defendant was an eligible youth pursuant to the factors elucidated in CPL 720.10 (3). On the record before us, County Court did not make such determination, but rather "appears to have moved to the second step and determined that youthful offender treatment was inappropriate under CPL 720.20" (*People v Colon*, 173 AD3d at 1257; *see People v Jones*, 182 AD3d at 700). Although the People assert that County Court implicitly determined that defendant was not an eligible youth in denying him youthful offender status, an on-the-record determination as to a defendant's eligibility is required in every case (*see People v Hargrove*, 37 NY3d 1076, 1077-1078 [2021]; *People v Middlebrooks*, 25 NY3d at 527-528; *People v Jones*, 182 AD3d at 700). Inasmuch as County Court "was required to determine – in the context of defendant's conviction of [criminal possession of a weapon in the second degree] – whether defendant was an

eligible youth in the first instance, defendant's sentence upon such conviction is vacated, and the matter is remitted to [County] Court 'for a determination as to defendant's eligibility for youthful offender status' with respect thereto" (*People v Jones*, 219 AD3d at 1613, quoting *People v Robertucci*, 172 AD3d 1782, 1783 [3d Dept 2019]; *see People v McCall*, 177 AD3d 1395, 1396 [4th Dept 2019], *lv denied* 34 NY3d 1130 [2020]).

Aarons, J.P., Reynolds Fitzgerald, Powers and Mackey, JJ., concur.

ORDERED that the judgment convicting defendant upon his plea of guilty of the crime of criminal possession of a weapon in the second degree is modified, on the law, by vacating the sentence imposed; matter remitted to the County Court of Rensselaer County for further proceedings not inconsistent with this Court's decision; and, as so modified, affirmed.

ORDERED that the judgment convicting defendant upon his plea of guilty of the crime of attempted robbery in the second degree is affirmed.

ENTER:



Robert D. Mayberger
Clerk of the Court