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

Decided and Entered: October 22, 2026 CR-23-2268

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

TONY WINSTON,
Appellant.

Calendar Date: September 15, 2026

Before: Garry, P.J., Clark, Aarons, Reynolds Fitzgerald and Ryba, JJ.

David E. Woodin, Catskill, for appellant.

Christopher Liberati-Conant, District Attorney, Hudson, for respondent.

Letitia James, Attorney General, New York City (*Jalina J. Hudson* of counsel), in her statutory capacity under Executive Law § 71.

Reynolds Fitzgerald, J.

Appeals (1) from a judgment of the County Court of Columbia County (Jonathan Nichols, J.), rendered June 26, 2023, upon a verdict convicting defendant of the crimes of criminal possession of a controlled substance in the third degree and tampering with physical evidence, and (2) from a judgment of said court (Brian Herman, J.), rendered October 22, 2025, which resentenced defendant.

In 2020, as the result of a search conducted during an early morning traffic stop, defendant and his codefendant were charged by indictment with criminal possession of a

controlled substance in the third degree based on a theory that they unlawfully possessed cocaine with the intent to sell. They were also charged with a second count of criminal possession of a controlled substance in the third degree based on the amount of cocaine discovered by police, and with tampering with physical evidence. The codefendant pleaded guilty to both drug possession counts, and was ultimately sentenced to a total term of 1½ years in prison, to be followed by two years of postrelease supervision. Defendant proceeded to trial.

The evidence at trial, based on the testimony of the two county sheriff's deputies who initiated the traffic stop, showed that, as the deputies approached the car, they smelled marihuana and commenced a search of the vehicle for illegal drugs.[1] After the deputies located several bags of marihuana, the codefendant acknowledged that everything in the back seat of the car was his, including a red backpack. One of the deputies opened the backpack and showed the codefendant and defendant its contents, including a Ziplock baggie labelled "100" and containing a substance later confirmed to be approximately 100 grams of cocaine. When neither defendant identified the substance, the codefendant was arrested.

The codefendant thereafter collapsed from an apparent medical issue and was ultimately transported from the scene by an ambulance. During this medical emergency, the deputies allowed defendant to walk unaccompanied to the edge of the woods to urinate. According to the deputies, at this point, they intended to let defendant leave the scene because the codefendant had acknowledged that the drugs were his. However, when the deputies returned to the car, they discovered that the baggie of cocaine was missing. A review of their dashcam footage revealed that, while deputies were assisting the codefendant and before defendant walked over to the woods, he removed the baggie from the vehicle. Based on this, police arrested defendant. Shortly thereafter, they found the baggie of cocaine near the location where defendant had urinated.

In the subsequent trial, the jury acquitted defendant of the intent to sell charge, but convicted him on the additional counts of possession and tampering. After procedural history not relevant here,[2] defendant was sentenced to a maximum sentence of nine years

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[1] At the time of the search, possession of recreational marihuana was illegal.

[2] Defendant was initially sentenced, as a second felony drug offender, to a prison term of 15 years, to be followed by three years of postrelease supervision, on the

in prison, to be followed by two years of postrelease supervision, on the possession charge, and a concurrent sentence of 2 to 4 years in prison on the tampering charge.

Initially, we disagree with defendant that he was denied the effective assistance of counsel. Under this state's meaningful representation standard, in order to assess whether defendant was deprived the effective assistance of counsel we must consider "the circumstances of a particular case, viewed in totality," and "determine whether counsel's performance was consistent with strategic decisions of a reasonably competent attorney" or "effectively deprived [the] defendant of a fair trial" (*People v T.P.*, 45 NY3d 48, 52 [2025] [internal quotation marks and citations omitted]; *see People v Watkins*, 42 NY3d 635, 639 [2024], *cert denied* ___ US ___, 145 S Ct 459 [2024]). The burden is on defendant "to demonstrate the absence of strategic or other legitimate explanations for counsel's alleged shortcomings," and this Court should not second guess trial counsel's representation "with the clarity of hindsight to determine how the defense might have been more effective" (*People v Benevento*, 91 NY2d 708, 712 [1998] [internal quotation marks and citations omitted]; *see People v Gibson*, 240 AD3d 1054, 1058 [3d Dept 2025]; *People v Burns*, 188 AD3d 1438, 1440 [3d Dept 2020], *lv denied* 36 NY3d 1055 [2021]).

Defendant has failed to demonstrate that his trial counsel's alleged shortcomings lacked a legitimate explanation. We disagree with defendant that his only tenable strategy was to argue that he did not know that the substance in the baggie that he removed from the car was a narcotic. The overwhelming evidence against defendant suggested that he *did* know what was in the baggie, particularly considering that the jury was charged, over trial counsel's strenuous objection, that "the presence of a controlled substance in an automobile is presumptive evidence of knowing possession of that substance by each and every person in the automobile at the time the controlled substance was found" (*see* Penal Law 220.25 [1]).

Rather than argue otherwise, trial counsel focused his defense on the codefendant's admission that the objects discovered in the backseat, including the cocaine, were his. This strategy was effective insofar as it resulted in defendant being acquitted of the intent

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possession conviction, and a concurrent prison term of 2 to 4 years on the tampering conviction. He thereafter moved to, among other things, set aside his sentence. County Court (Herman, J.) granted this branch of defendant's motion and determined that it would resentence defendant as a first-time offender. The People appealed this order, but ultimately withdrew that appeal before it was perfected.

to sell charge, suggesting that the jury believed defense counsel's narrative that defendant only learned of the cocaine after deputies showed it to him. Indeed, defense counsel was successful at eliciting testimony during his thorough cross-examination of both deputies that they believed that the drugs recovered in the car belonged to only the codefendant, that defendant did not have an intent to sell, and that the deputies would have let defendant go had he not tried to dispose of the cocaine. Under these circumstances, it was certainly reasonable for defense counsel to focus on the intent to sell charge, rather than the other two charges, given the overwhelming evidence that defendant tried to dispose of the drugs (*see generally People v Nesbitt*, 20 NY3d 1080, 1081 [2013] [acknowledging that "there may be strategic reasons for a lawyer's choice . . . to contest one charge vigorously while essentially ignoring others"]). Defense counsel also presented cogent opening and closing statements and made appropriate objections throughout trial, including, as noted, an unsuccessful challenge to the automobile presumption charge and an unsuccessful challenge to the admission of certain statements by defendant on the basis that they were involuntary. Considering the totality of the circumstances, defendant received meaningful representation and was not deprived a fair trial.

However, we agree with defendant's arguments regarding his sentence. First, we agree that the 2 to 4 year sentence imposed on the tampering conviction became illegal once defendant was resentenced as a first-time offender (*see* Penal Law § 70.00 [2] [e]; [3] [b]). Accordingly, we reduce that sentence, on the law, to 1 to 4 years, which shall still be served concurrently with the sentence imposed on the possession conviction. Second, we also agree with defendant that the maximum nine-year prison sentence imposed on the possession conviction was unduly harsh and severe. Even considering defendant's extensive criminal history, we find that the disparity in his sentence and the 1½-year sentence of his codefendant – who pleaded guilty to *both* drug offenses – is inappropriate.[3] Accordingly, we reduce, in the interest of justice, defendant's sentence on the criminal possession of a controlled substance conviction to 4½ years in prison, to be followed by two years of postrelease supervision.

Garry, P.J., Clark, Aarons and Ryba, JJ., concur.

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[3] As noted, unlike the codefendant, defendant was acquitted of the intent to sell charge. However, *after* sentencing defendant to a maximum sentence, County Court – a different judge than who had presided over the trial – acknowledged that it had not "realize[d]" that defendant had been acquitted of this count.

ORDERED that the judgments are modified, on the law, by reducing the sentence for defendant's conviction of tampering with physical evidence to a prison term of 1 to 4 years; as a matter of discretion in the interest of justice, by reducing the sentence for criminal possession of a controlled substance in the third degree to a concurrent prison term of 4½ years, to be followed by two years of postrelease supervision; and, as so modified, affirmed.

ENTER:



Robert D. Mayberger
Clerk of the Court