

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

Decided and Entered: July 16, 2026

CR-24-1483

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

TYLER BURNS,

Appellant.

Calendar Date: May 26, 2026

Before: Reynolds Fitzgerald, J.P., Ceresia, McShan, Mackey and Ryba, JJ.

Kelly L. Egan, Rensselaer, for appellant.

Lee C. Kindlon, District Attorney, Albany (*Emily Schultz* of counsel), for
respondent.

Ryba, J.

Appeal from a judgment of the County Court of Albany County (Andra Ackerman, J.), rendered October 5, 2023, convicting defendant upon his plea of guilty of the crime of criminal possession of a weapon in the second degree.

In August 2023, defendant agreed to waive indictment and plead guilty to a superior court information charging him with criminal possession of a weapon in the second degree, and further agreed to waive his right to appeal. The charge stemmed from a May 2022 incident in which defendant, who was then 18 years of age, fired several rounds from a handgun toward a building in the City of Albany and struck one of its occupants. County Court sentenced defendant, in accordance with the terms of the plea

agreement, to nine years in prison, to be followed by five years of postrelease supervision. Defendant appeals.

Defendant argues that remittal is warranted because County Court did not, as required, render "a determination as to whether defendant . . . should be adjudicated a youthful offender, notwithstanding that no request was made for such treatment" (*People v Simon*, 205 AD3d 1209, 1210 [3d Dept 2022]; *see* CPL 720.20 [1]; *People v Rudolph*, 21 NY3d 497, 499 [2013]; *People v Vanderhorst*, 235 AD3d 1089, 1090-1091 [3d Dept 2025]). This argument survives an appeal waiver in that it implicates the legality of the sentence and, as a result, we need not address defendant's challenge to the validity of his appeal waiver (*see People v Jones*, 219 AD3d 1610, 1612 [3d Dept 2023]; *People v Irizarry*, 203 AD3d 1471, 1471 [3d Dept 2022]). Moreover, as the People correctly concede, the argument has merit.

As defendant was convicted of an armed felony committed when he was 18 years old (*see* CPL 1.20 [41]; 720.10 [1], [2] [a] [ii]; Penal Law § 70.02 [1] [b]), County Court was obliged to determine whether he was eligible for youthful offender treatment "by considering the presence or absence of the factors set forth in CPL 720.10 (3)" (*People v Middlebrooks*, 25 NY3d 516, 527 [2015]; *accord People v Jones*, 219 AD3d at 1612). In such a situation, "[i]f the court determines, in its discretion, that neither of the CPL 720.10 (3) factors exist and states the reasons for that determination on the record, no further determination by the court is required. If, however, the court determines that one or more of the CPL 720.10 (3) factors are present, and the defendant is therefore an eligible youth, the court then 'must determine whether or not the eligible youth is a youthful offender' " (*People v Middlebrooks*, 25 NY3d at 528, quoting CPL 720.20 [1]; *see People v Jones*, 219 AD3d at 1612-1613). County Court did not conduct that analysis and, "[a]s the record does not contain enough information for this Court to reach a determination," we vacate the sentence and remit for County Court to do so (*People v Colon*, 173 AD3d 1255, 1257 [3d Dept 2019]; *see People v Vanderhorst*, 235 AD3d at 1091; *People v Jones*, 219 AD3d at 1612). Defendant's remaining challenge to the sentence is academic as a result.

Reynolds Fitzgerald, J.P., Ceresia, McShan and Mackey, JJ., concur.

ORDERED that the judgment is modified, on the law, by vacating the sentence imposed; matter remitted to the County Court of Albany County for further proceedings not inconsistent with this Court's decision; and, as so modified, affirmed.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large initial "R" and a stylized "D".

Robert D. Mayberger
Clerk of the Court