



May the Department of Corrections and Community Supervision disregard a sentencing court's direction that an incarcerated individual be enrolled in the shock incarceration program when the individual has been sentenced for both an eligible crime and a non-eligible crime? The Third Department tackled that novel question recently, holding that the concurrent sentencing for an eligible drug offense and a nonenumerated crime does not authorize DOCCS to disregard the sentencing court's direction to enroll the individual in the shock incarceration program for the eligible offense. Let's take a look at that opinion and what else has been going on in the New York appellate courts over the last week.

THIRD DEPARTMENT

CRIMINAL LAW, ELIGIBILITY FOR SHOCK INCARCERATION

Matter of Adams v Martuscello, 2026 NY Slip Op 04542 (3d Dept July 23, 2026)

Issue: May the Department of Corrections and Community Supervision disregard a sentencing court's direction that an incarcerated individual be enrolled in the shock incarceration program when the individual has been sentenced for both an eligible crime and a non-eligible crime?

Facts: After the defendant pleaded guilty, in separate dockets, to criminal possession of a controlled substance in the third degree and criminal contempt in the first degree, County Court, in sentencing defendant, ordered that defendant be "enrolled in the shock incarceration program pursuant to Penal Law § 60.04 (7) in connection with his conviction for the controlled substance offense and made a non-binding recommendation in favor of shock enrollment on the criminal contempt conviction." When the defendant became time-eligible for shock incarceration, DOCCS "took the position that, while [the defendant's] drug possession conviction was eligible for court-ordered enrollment in shock, his criminal contempt conviction was not and, therefore, it was construing County Court's order directing shock incarceration on the drug possession conviction as a nonbinding recommendation." The defendant's counsel demanded that he be enrolled, arguing that DOCCS lacked authority to disregard County Court's order directing enrollment for the eligible drug offense.

DOCCS persisted in its refusal to permit defendant's enrollment in shock incarceration, and the defendant then commenced this CPLR Article 78 seeking mandamus to compel DOCCS to comply with County Court's order. DOCCS opposed, arguing that the defendant did not have a clear entitlement to relief because "court-ordered enrollment in the program was unavailable given petitioner's criminal contempt conviction . . . Supreme Court agreed with respondent and dismissed the petition, concluding that, under the most rational construction of Penal Law § 60.04 (7) (a), DOCCS retains the discretion to determine eligibility for enrollment in the shock incarceration program when a person has been sentenced to concurrent terms of incarceration on both a shock eligible drug offense and an 'eligible non-drug offense.'"

Holding: The Appellate Division, Third Department reversed, holding that "the statutory scheme does not support finding that a court order directing an eligible incarcerated individual's enrollment in the program under Penal Law § 60.04 (7) (a) constitutes a nonbinding recommendation under the circumstances presented here — i.e., when the same sentencing judge sentences an eligible defendant to concurrent terms of incarceration on convictions for both an enumerated drug offense and another, non-enumerated, offense that is not expressly disqualifying under Correction Law § 865 (1)." The court explained that the "shock incarceration program provides selected eligible incarcerated individuals the opportunity to 'serve a period of six months of their sentence in a shock incarceration facility,' during which they are provided with 'rigorous physical activity, intensive regimentation and discipline and rehabilitation therapy and programming.' Incarcerated individuals who successfully complete the program and receive a certificate of earned eligibility are eligible for certain benefits depending on whether they are serving a determinate or indeterminate term of incarceration."

Although when the shock incarceration program was first introduced DOCCS had discretion to determine when incarcerated individuals were enrolled, subsequent statutory amendments limited DOCCS's discretion in that regard: "where a court lawfully sentences an incarcerated individual to the program, DOCCS's authority is 'limited to its administration of the program' and determining whether 'a judicially sentenced shock incarceration incarcerated individual 'has a medical or mental health condition that would render the incarcerated individual unable to successfully complete the program.' DOCCS has no discretion as to the eligibility criteria in that scenario," the court held. On the other hand, when a court sentences a defendant to shock incarceration for a non-enumerated offense, that order merely constitutes a nonbinding recommendation.

Here, the court held, the defendant “was convicted of a qualifying drug offense, was sentenced to a term of incarceration in connection therewith and was an eligible incarcerated individual under the criteria set forth in Correction Law § 865 (1). Accordingly, County Court was plainly authorized under Penal Law § 60.04 (7) (a) to direct shock incarceration on [the defendant’s] criminal possession of a controlled substance conviction, and he became eligible for enrollment in the program when he was within three years of his conditional release date.” The mere fact that the defendant was also concurrently sentenced for criminal contempt, a non-enumerated offense that that is not expressly disqualifying under Correction Law § 865(1), did not authorize DOCCS to disregard County Court’s direction to enroll the defendant in shock incarceration for his enumerated drug offense. Thus, the court explained, “when the same sentencing judge imposes concurrent sentences on convictions for an eligible drug offense and another non-enumerated offense, the sentencing judge’s directive to enroll an eligible incarcerated individual into the shock incarceration program upon the conviction for the qualifying drug offense is binding on DOCCS, so long as the conviction on the additional non-drug offense is not one of the disqualifying offenses listed in Correction Law § 865 (1).”

FOURTH DEPARTMENT

CRIMINAL LAW, RAISE THE AGE LAW

People v Neyshaliz M. V., 2026 NY Slip Op 04581 (4th Dept July 24, 2026)

Issue: Should a youthful offender have been disqualified from having her offense heard in Family Court?

Facts: After the 17-year-old defendant ran away from home, her ex-boyfriend picked her up and she showed him a handgun that she was carrying in her waistband. The two got into a verbal altercation at a convenience store, and the ex-boyfriend was asked to leave. When he returned a short while later, police officers were at the store, and he advised the officers that the defendant was carrying the firearm. “The officers approached defendant inside the store and ordered her to remove her hands from her pockets. When she did so, an officer observed a loaded magazine in her hand and the handgun in her waistband. Defendant was handcuffed, and the officer seized the handgun and ammunition.”

Defendant was charged with two counts of criminal possession of a weapon. Because defendant was 17 years old, her offense was presumptively removable to Family Court under New York’s Raise the Age Law. The People, however, “sought to prevent removal to Family Court on the ground that defendant ‘displayed a firearm . . . in furtherance of such offenses,’ arguing that defendant ‘displayed’ the weapon by showing it to her ex-boyfriend, and that she did so in furtherance of the charged offenses. The court agreed with the People that defendant was disqualified from removal to Family Court on that basis.” Defendant then pled guilty to one of the weapons possession counts.

Holding: The Appellate Division, Fourth Department, reversed defendant’s conviction, holding that County Court improperly determined that she was disqualified from removal to Family Court. The court explained, under New York’s Raise the Age Law, the Legislature raised the age of criminal responsibility to 18, and determined that criminal proceedings against 16- and 17-year-olds would be heard in the “youth part” of a “superior court, unless and until their cases are removed to Family Court. The statute creates a presumption of removal to Family Court for adolescent offenders, subject to listed exceptions. Different exceptions may apply depending upon the severity of the offense; generally, for nonviolent offenses, the People may move to prevent removal only upon a showing that ‘extraordinary circumstances exist that should prevent the transfer of the action to family court.’” When, however, the defendant has been charged with a Class A non-drug felony or a violent felony, the People may seek to prevent removal on any of three listed grounds, including, as relevant here, “that defendant displayed a firearm, shotgun, rifle or deadly weapon as defined in the penal law in furtherance of the charged offenses.”

The court held, here, to further an offense meant to “carry out an act that makes the offense more likely to occur.” Contrary to the People’s argument, however, “defendant did not ‘further’ her possession of the weapon merely by displaying it to her ex-boyfriend, even if she did so to emphasize her control of the handgun. Every display of a handgun emphasizes control by the person possessing it, and thus every display would always further the charged offense. So too with the dissent’s proposed construction. Every display of a weapon provides evidence of possession—it is not possible to display the weapon without possessing it—and thus there would always be a ‘logical nexus’ between a display and the possessory offense. Either reading would effectively render meaningless the separate statutory requirement that the display ‘further’ the charged offense.” Thus, the court held, “absent any additional proof that defendant’s display somehow advanced her possession of the weapon—something above and beyond merely emphasizing her control of the weapon,” County Court erred in preventing the removal of defendant’s offenses to Family Court under the Raise the Age Law.

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