

State of New York Court of Appeals

MEMORANDUM

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No. 82
The People &c.,
Respondent,
v.
David Ekupe,
Appellant.

Matthew Bova, for appellant.
Mary McGarvey-DePuy, for respondent.
Chief Defenders Association of New York, amicus curiae.

MEMORANDUM:

The order of the Appellate Division should be affirmed.

Defendant was charged in 2021 with second-degree criminal possession of a weapon (*see* Penal Law § 265.03 [3]) and related offenses. Nine months after his arrest, he

moved to dismiss the charges on statutory speedy trial grounds (*see* CPL 30.30 [1] [a]). Supreme Court denied the motion. Defendant pleaded guilty and, as part of a negotiated plea bargain, waived the right to appeal. It is undisputed that defendant's appeal waiver, by its terms, covered any claim that his statutory speedy trial rights were violated.

Defendant appealed, arguing that CPL 30.30 (6) precludes waiver of the right to raise a statutory speedy trial claim on appeal. The Appellate Division unanimously affirmed (236 AD3d 528 [1st Dept 2025]). The Court held, as has every appellate court to address the question, that CPL 30.30 (6) does not shield statutory speedy trial claims from appeal waivers (*see id.* at 528; *accord People v Person*, 184 AD3d 447 [1st Dept 2020]; *People v Gore*, 224 AD3d 848 [2d Dept 2024]; *People v Votaw*, 190 AD3d 1162 [3d Dept 2021]; *People v Kelly*, 231 AD3d 1515 [4th Dept 2024]). A Judge of this Court granted defendant leave to appeal (*see* 44 NY3d 993 [2025]).

We affirm. The plain statutory text defeats defendant's position (*see e.g. People v Hernandez*, 43 NY3d 591, 596 [2025] ["Where a statute is plain on its face, we need only apply it in accordance with its meaning"]). Before CPL 30.30 (6)'s enactment, it was well settled that a criminal defendant forfeited any statutory speedy trial claim by pleading guilty (*see People v O'Brien*, 56 NY2d 1009, 1010 [1982]; *People v Suarez*, 55 NY2d 940, 942 [1982]). CPL 30.30 (6) abrogates this forfeiture rule: the statute straightforwardly provides that "[a]n order finally denying a motion to dismiss" on statutory speedy trial grounds "shall be reviewable upon an appeal from an ensuing judgment of conviction notwithstanding the fact that such judgment is entered upon a plea of guilty" (CPL 30.30 [6]). The statute's text does not address appeal waivers in any way; its

“notwithstanding” clause is instead directed exclusively to the consequences of a guilty plea. Thus, giving the text its plain meaning, CPL 30.30 (6) does not preclude appeal waivers.

In arguing otherwise, defendant in effect interprets CPL 30.30 (6) as reaching any final adverse statutory speedy trial ruling challenged by a defendant on their appeal. That reading renders the “notwithstanding” clause superfluous. As defendant would have it, if the “notwithstanding” clause did not exist—i.e., if CPL 30.30 (6) said only that an order finally denying a defendant’s statutory speedy trial motion “shall be reviewable upon an appeal from an ensuing judgment of conviction”—the statute’s scope would be the same. Bedrock interpretive principles instruct us to avoid that result (*see e.g. People v Galindo*, 38 NY3d 199, 205-206 [2022] [declining to read a statute “ ‘in such a way as to render some of its terms superfluous’ and, as a consequence, hold it a legal nullity”]).

Nor does adhering to the statute’s unambiguous meaning yield any absurd or legally unreasonable consequence that should be avoided as a matter of statutory interpretation (*cf. People v Santi*, 3 NY3d 234, 242 [2004]). CPL 30.30 (6) provides that a defendant’s guilty plea no longer forfeits appellate review of a statutory speedy trial claim, leaving the parties free to bargain for an appeal waiver if they wish—just as they may do respecting the vast majority of the constitutional and statutory claims that survive a guilty plea (*see generally People v Seaberg*, 74 NY2d 1 [1989]; *see People v Thomas*, 34 NY3d 545, 557-558 [2019]; *contra* dissenting op at 6-7). We cannot “legislate under the guise of statutory interpretation” by “expand[ing the statute] beyond its plain language” (*People v Anonymous*, 34 NY3d 631, 642 [2020] [brackets omitted]; *contra* dissenting op at 7 [doing

so in service of “policy objectives” that the dissent deems “good for the parties and the public”]). In any event, contrary to the dissent’s contention, the legislative history does not support a different reading: a defendant’s “right to appeal” an adverse statutory speedy trial ruling is “preserved” notwithstanding the defendant’s act of pleading guilty, just as the statute’s language plainly states (dissenting op at 7, quoting NY Senate Debate on 2019 NY Senate Bill S1509C, Mar. 31, 2019 at 2613).

Moreover, “the Legislature is presumed to be aware of the decisional and statute law in existence at the time of an enactment” (*Galindo*, 38 NY3d at 205 [alterations omitted], quoting *Arbegast v Board of Educ. of S. New Berlin Cent. School*, 65 NY2d 161, 169 [1985]). And when CPL 30.30 (6) was enacted, we had long held that CPL 710.70 (2)—a highly similar statute addressing defendants’ suppression claims—does not bar appeal waivers (*see People v Williams*, 36 NY2d 829, 830 [1975]; *Thomas*, 34 NY3d at 565).

CPL 710.70 (2) states, in language almost identical to CPL 30.30 (6), that “[a]n order finally denying a motion to suppress evidence may be reviewed upon an appeal from an ensuing judgment of conviction notwithstanding the fact that such judgment is entered upon a plea of guilty.” Defendant argues that these statutes are different because CPL 710.70 (2) says suppression claims “may be reviewed” on appeal notwithstanding a defendant’s guilty plea, and CPL 30.30 (6) says statutory speedy trial claims “shall be reviewable” on appeal notwithstanding a defendant’s guilty plea. Defendant focuses narrowly on the word “shall” and argues that it conveys an inexorable command. But “shall” does not stand alone; we must read it with the words that follow. Doing so, although

“it is reasonable to assume that” the legislature’s use of different language indicates a difference in meaning (*Matter of Albano v Kirby*, 36 NY2d 526, 530 [1975]), the other interpretive canons refute that assumption here. Indeed, reading “may be reviewed” and “shall be reviewable” in context, we are unable to discern any difference in meaning between them. Both simply state that a defendant’s *guilty plea* does not render the issue in question unreviewable on appeal. Because CPL 710.70 (2) and 30.30 (6) are substantively identical, their meaning is substantively the same.

The parties’ remaining contentions are academic or lack merit.

RIVERA, J. (dissenting):

CPL 30.30 (6) expressly provides that a speedy trial order “shall be reviewable upon an appeal.” This mandatory and unequivocal language renders ineffective any attempt to waive this right to appeal a defendant’s speedy trial claim. If the plain text was not enough, the statutory purpose and legislative history confirm this interpretation.

CPL 30.30 (6) was modeled on CPL 710.70 (2), which provides that a suppression claim “may be reviewed upon an appeal.” Although I agree with the majority that the language in these two sections is “almost identical” (majority op at 4), I disagree that the difference in word choice may be interpreted as an intent to make the two sections equivalent in their effect. In fact, the legislative drafting and final statutory texts reveal that the opposite is true. The Legislature’s use of the mandatory term “shall” in CPL 30.30 (6) instead of CPL 710.70 (2)’s permissive term “may” reflects a clear objective to render CPL 30.30 (6)’s appellate review authority unwaivable. The majority’s interpretation also essentially nullifies the purpose of CPL 30.30 (6): to enable appellate review of speedy trial claims as a means to protect defendants’ rights in a system where pleas and appellate waivers are the norm. I can make no sense of an interpretation that renders CPL 30.30 (6) a dead letter for the vast majority of intended beneficiaries.

Therefore, I would reverse the Appellate Division order and remit for a merits determination because defendant’s guilty plea and appeal waiver did not foreclose appellate review of his speedy trial claim.

* * *

Defendant David Ekukpe moved to dismiss pending charges against him on speedy trial grounds (*see* CPL 30.30 [1] [a]). After Supreme Court denied the motion, defendant pleaded guilty to attempted criminal possession of a weapon in the second degree and attempted criminal possession of a weapon in the third degree. Defendant also signed a form waiver, by which he waived, among other things, appellate review of the court’s

adverse statutory speedy trial decision. Defendant now renews his argument—rejected by the Appellate Division (*see* 236 AD3d 528, 528 [1st Dept 2025])—that CPL 30.30 (6)’s mandatory language authorizes appellate review of his speedy trial claim, notwithstanding his plea and appeal waiver. The statutory text and legislative history support that interpretation.

“In statutory interpretation cases, the Court’s primary consideration is to ascertain and give effect to the intention of” the Legislature (*People v Badji*, 36 NY3d 393, 398 [2021], quoting *Matter of Mestecky v City of New York*, 30 NY3d 239, 243 [2017]). “As the clearest indicator of legislative intent is the statutory text, the starting point . . . must always be the language itself, giving effect to the plain meaning thereof” (*People v Teri W.*, 31 NY3d 124, 127 [2018] [internal quotation marks omitted], quoting *People v Golo*, 26 NY3d 358, 361 [2015]). All “parts of a statute must be harmonized with each other as well as with the general intent of the whole statute, and effect and meaning must, if possible, be given to the entire statute and every part and word thereof” (*People v Pabon*, 28 NY3d 147, 152 [2016], quoting McKinney’s Cons Laws of NY, Book 1, Statutes §98 [a]). Finally, it is well established that a statute’s use of the word “ ‘may’ . . . implies discretion” while “the word ‘shall’ usually connotes a requirement” (*Smith v Spizzirri*, 601 US 472, 476 [2024], quoting *Maine Community Health Options v United States*, 590 US 296, 310 [2020]).

CPL 30.30 (6) provides that an “order finally denying a motion to dismiss” on statutory speedy trial grounds “shall be reviewable upon an appeal from an ensuing judgment of conviction notwithstanding the fact that such judgment is entered upon a plea

of guilty.” The text is plain and unambiguous, as we held in *People v Nantan* (— NY3d —, — [2026] [decided today]).

While we need look no further than the text (*see People v Galindo*, 38 NY3d 199, 203 [2022] [“unambiguous language of a statute is alone determinative”], quoting *Riley v County of Broome*, 95 NY2d 455, 463 [2000]), it so happens that this interpretation is supported by legislative history and intent. The Legislature enacted CPL 30.30 (6) as part of a wider slate of reforms addressing trial readiness delays of intolerable length that had led to devastating consequences for persons charged with a crime (*see Nantan*, — NY3d at — [examining the legislative history]). CPL 30.30 (6) was modeled almost exactly on CPL 710.70 (2), which applies to appellate review of evidence suppression claims. CPL 710.70 (2) provides that an “order finally denying a motion to suppress evidence may be reviewed upon an appeal from an ensuing judgment of conviction notwithstanding the fact that such judgment is entered upon a plea of guilty.” Decades ago, this Court interpreted that language to permit a defendant to waive their right to appeal a suppression denial as part of their guilty plea, which would otherwise be reviewable under the plain text of CPL 710.70 (2) (*see People v Williams*, 36 NY2d 829, 830 [1975 per curiam]). Since the Legislature is “presumed to be aware of the decisional . . . law in existence at the time of an enactment” (*Arbegast v Board of Educ. of S. New Berlin Cent. School*, 65 NY2d 161, 169 [1985]), that begs the question of why the Legislature would choose to use the word “shall” over “may[,]” knowing that “shall” has a different meaning and legal implication? The only possible conclusion to be drawn from the text and this legislative history is that the Legislature chose to use mandatory language—“shall”—to avoid our interpretation of

the phrase “may be reviewed” as allowing a waiver to override their statutory command. Put another way, if the Legislature meant CPL 30.30 (6) to be interpreted as permitting the same waiver bar to appellate review this Court read into CPL 710.70 (2), we would expect it to adopt, unaltered, the time-tested permissive language that achieves that end. It chose otherwise. The reason is obvious; the Legislature enacted CPL 30.30 (6) to make appellate review of speedy trial claims unwaivable.

The majority acknowledges that “it is reasonable to assume that the Legislature’s use of different language indicates a difference in meaning” (majority op at 5 [internal quotation marks omitted]), but claims that “other interpretive canons refute that assumption here” (*id.*). According to the majority we should not accord “shall” and “may” their usual meaning here because, as used in CPL 30.30 (6) and CPL 710.70 (2), those words do not stand in isolation. I agree that we read words of a statute in context to give meaning to the whole (*see Pabon*, 28 NY3d at 152), but doing so here further illustrates that the majority’s interpretation of the two provisions is untenable.

CPL 30.30 (6) provides that a speedy trial claim “*shall* be reviewable” and CPL 710.70 (2) states that a suppression issue “*may* be reviewed” (emphases added). The majority contends that there is no difference between these two phrases, and both simply mean that a guilty plea does not render the issue “unreviewable on appeal” (majority op at 4-5). That conclusion is belied by the language itself. The phrase “shall be reviewable” means that the review is authorized when a defendant raises the claim on their appeal. If the Legislature had written that speedy trial issues “shall be reviewed[,]” an appellate court would be required to review the issue regardless of defendant’s appellate argument.

Words have particular meanings, and there is a wide difference between the mandatory command “shall” and the permissive term “may” (*see Smith*, 601 US at 476 [“shall creates an obligation impervious to judicial discretion” (internal quotation marks omitted)]). The use of those respective words in statutory texts that provide different conditions for appellate review of a defendant’s challenge to an adverse speedy trial determination is thus no surprise. The majority’s interpretive hook is in reality a misreading of the Legislature’s intent, which it expressed with grammatical precision.

Significantly, my interpretation of CPL 30.30 (6)—unlike the majority’s reading—furtheres the legislative purpose (*see Post v 120 E. End Ave. Corp.*, 62 NY2d 19, 24 [1984] [“(R)emedial statutes should be liberally construed to spread [their] beneficial effects as widely as possible”]; *Weed v Tucker*, 19 NY 422, 433 [1859] [a “remedial” statute must be “construed liberally . . . largely and beneficially—so as to suppress the mischief and advance the remedy”]). In a system where guilty pleas are commonly accompanied by waivers of certain appellate rights, why would the Legislature enact a statute intended to have remedial effect that in reality results in little practical benefit for most defendants? The purpose of CPL 30.30 (6) is to expand appellate review of speedy trial claims as part of a statutory scheme intended to reduce pretrial delays and mitigate their detrimental impact on persons charged with a crime (*see NY Senate Debate on 2019 NY Senate Budget Bill*, Mar. 31, 2019, at 2800-2803 [explaining that the CPL 30.30 amendments aimed to “fix[]” a “system” that had, through “the lack of a speedy trial,” inflicted “injustice” against the “most vulnerable”]; *see also NY Senate Debate on 2019 NY Senate Bill S1509C*, Mar. 31, 2019 at 2613 [bill sponsor affirming that “the right to appeal” a speedy

trial determination following a plea “is preserved”]). The opportunity for a dismissal on appeal based on a statutory speedy trial violation is obviously an enormous benefit to a defendant, and it also incentivizes the prosecution to comply with its speedy trial obligations. Moreover, “[a]ppellate review of speedy trial errors alleged in pending appeals advances the salutary policy objectives that underlie” our reformed statutory speedy trial regime “by ensuring errors in the timely adjudication of criminal matters are corrected not only for the affected individual defendant, but throughout our State’s criminal legal system” (*see Nantan* — NY3d at —). That is good for the parties and the public.

Our role as final authority on the meaning of statutory language is to give effect to the Legislature’s intent and purpose. Because the majority’s interpretation lacks textual and historical support and nullifies CPL 30.30 (6)’s beneficial purpose for the overwhelming majority of defendants to which it applies, I dissent.

Order affirmed, in a memorandum. Judges Garcia, Singas, Cannataro and Troutman concur. Judge Rivera dissents in an opinion, in which Chief Judge Wilson and Judge Halligan concur.

Decided October 29, 2026