

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Manzanet-Daniels, J.P., Kapnick, Rodriguez, Pitt-Burke, O'Neill Levy, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

Ind. No. 3418/16
Case No. 2017-03090

-against-

AVIS RUIZ,
Defendant-Appellant.

Twyla Carter, The Legal Aid Society, New York (Harold V. Ferguson, Jr. of counsel), for appellant.

Darcel D. Clark, District Attorney, Bronx (Emily Anne Aldridge of counsel), for respondent.

Judgment, Supreme Court, Bronx County (Steven L. Barrett, J.), rendered May 10, 2017, convicting defendant, upon his plea of guilty, of attempted rape in the second degree, and sentencing him to a jail term of 6 months, with 10 years of probation, unanimously modified, on the law, to the extent of directing that the term of imprisonment and the period of probation run concurrently, and otherwise affirmed.

Defendant's challenge to his plea is unpreserved (*see People v Lopez*, 71 NY2d 662, 665-666 [1988]), and we decline to review it in the interest of justice. The exception to the preservation rule (*see Lopez*, 71 NY2d at 666) does not apply here because defendant did not say anything during the plea colloquy that negated an element of the crime or raised the possibility of a defense (*see People v Sosa*, 172 AD3d 432, 433 [1st Dept 2019]).

As the People concede, the sentence should be modified to specify that the term of imprisonment and the probationary period are concurrent (*see People v Jaffar*, 198 AD3d 467, 467 [1st Dept 2021], *lv denied* 37 NY3d 1097 [2021]; *see* Penal Law § 60.0[2][d]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 5, 2026

A handwritten signature in black ink, appearing to read "Susanna Molina Rojas". The signature is written in a cursive, flowing style.

Susanna Molina Rojas
Clerk of the Court