

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

Renwick, P.J., Kennedy, Friedman, Mendez, Hagler, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

Ind. No. 1351/21
Case No. 2025-02313

-against-

JONATHAN ARZU,
Defendant-Appellant.

Rosenberg Law Firm, Brooklyn (Samantha Imber of counsel), for appellant.

Darcel D. Clark, District Attorney, Bronx (Joseph Tucker of counsel), for respondent.

Judgment, Supreme Court, Bronx County (Alvin M. Yearwood, J.), rendered August 20, 2024, convicting defendant, upon his plea of guilty, of attempted criminal possession of a weapon in the second degree, and sentencing him, as a persistent violent felony offender, to a term of 12 years to life, unanimously affirmed.

Defendant validly waived his right of appeal. Colloquies tracking the model colloquy endorsed in *People v Thomas* (34 NY3d 545, 567 [2019], *cert denied* 589 US 1302 [2020]) are generally valid (*see e.g. People v Nunez*, 220 AD3d 597, 597-598 [1st Dept 2023], *lv denied* 41 NY3d 1004 [2024]). The court properly informed defendant of the claims that survived the waiver, and the written waiver supplemented defendant's oral waiver and cured any ambiguity from the oral colloquy (*see People v Ramos*, 7 NY3d 737, 738 [2006]; *People v Johnson*, 234 AD3d 503, 503 [1st Dept 2025], *lv denied* 43 NY3d 1009 [2025]; *People v Vaillant*, 74 AD3d 409, 409-410 [1st Dept 2010], *lv denied* 15 NY3d 896 [2010]). Defendant's valid waiver forecloses review

of his excessive sentence claim.

Defendant failed to preserve his claims that his plea was invalid based on his statement at the second plea proceeding that he did not know whether the pistol and ammunition were operable, and that the court coerced his plea by allegedly mischaracterizing the outcome of the suppression hearing (*see People v Lazaro*, -- AD3d --, --, 2026 NY Slip Op 00454, *1 [1st Dept 2026]; *People v Negron*, 222 AD2d 327, 327 [1st Dept 1995], *lv denied* 88 NY2d 882 [1996]), and we decline to review them in the interest of justice. In the alternative, we reject them on the merits.

A defendant's "knowledge of a firearm's operability is not an element of criminal possession of a weapon" (*People v Parrilla*, 27 NY3d 400, 405 [2016]). "Defendants need only knowingly possess a firearm" and "need not know that the firearm was loaded or operable" (*id.*). Accordingly, defendant's lack of knowledge as to whether the pistol and ammunition were operable did not invalidate his plea, and the court was not required to inquire further in response to defendant's statement (*cf. People v Muniz-Cayetano*, 186 AD3d 1169, 1170-1171 [1st Dept 2020], *lv denied* 36 NY3d 1052 [2021]).

Additionally, the court correctly characterized the record when it stated to the People that they won the suppression hearing as part of a colloquy asking the People to explain why they originally advocated dismissing the violent felony offenses. The court did not coerce defendant's plea by explaining to counsel that the minimum permissible sentence was 12 years to life and then adjourning the case. Defendant had two days between the final calendar call and the initial plea proceeding to discuss the People's offer with his family. At both plea proceedings, defendant "admitted his crime and acknowledged that he understood the court's instructions," "had sufficient time to discuss the plea bargain with counsel," and "understood what was happening in court"

and “that he was pleading guilty of his own free will” (*Lazaro*, 2026 NY Slip Op 00454, *1).

Finally, defendant did not plead guilty based on counsel’s incorrect advice about the minimum term, which was corrected at the last calendar call before the initial plea proceeding (*cf. People v Johnson*, 160 AD3d 516, 518 [1st Dept 2018]).

Even if defendant’s valid waiver did not preclude his excessive sentence claim, he is serving the minimum permissible sentence as a persistent violent felony offender (Penal Law §§ 70.08[2], [3][c], 110.00/265.03), and reducing the prison term would result in a sentence that is not “legally authorized” (CPL 470.20[6]).

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

ENTERED: March 10, 2026



Susanna Molina Rojas
Clerk of the Court