

Weinstein May Be Retried After NY Court Overturns Conviction

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By **Rachel Scharf** · [Listen to article](#)

Law360(April 25, 2024, 9:24 AM EDT)-- Harvey Weinstein seems poised to go to trial again in New York and testify in his own defense after the state's highest court overturned the movie mogul's rape conviction Thursday in a contentious, split opinion that found his first jury proceeding was unfair.

In a 4-3 opinion, the New York Court of Appeals held that Weinstein's **2020 sexual assault trial** should have been limited only to the accusations in the indictment. Instead, the lower court allowed three more women to testify that they were also assaulted by Weinstein and opened the door for prosecutors to cross-examine him about a slew of other bad acts if he testified — ultimately resulting in Weinstein opting not to take the stand.



Harvey Weinstein, shown here in October 2022, saw his 2020 rape conviction overturned Thursday by New York's highest court, the Court of Appeals. (Etienne Laurent/Pool Photo via AP)

The decision upends a seminal conviction in the #MeToo movement, and its timing represents a major public setback for the DA's office in the first days of its **historic criminal trial** against former President Donald Trump.

Less than an hour after the decision came down, District Attorney Alvin Bragg announced that he hoped to bring a new trial against Weinstein. "We will do everything in our power to retry this case, and remain steadfast in our commitment to survivors of sexual assault," a spokesperson for the DA's office said.

Weinstein's lawyers, meanwhile, celebrated the ruling in a press conference outside the 100 Centre St. courthouse in Manhattan that has housed the trials for both Weinstein and Trump.

Arthur Aidala of [Aidala Bertuna & Kamins PC](#) said the 72-year-old former movie producer wants to go to trial again and testify in his own defense this time, now that the top court has excluded improper cross-examination material.

"He's been dying to tell his story from day one," said Aidala. "It's a constitutional right to tell your side of the story without having so much baggage from your whole life being put on display to a jury."

Weinstein will be let out of Mohawk Correctional Facility in upstate New York, where he has been serving his now-upended **23-year sentence**. He will likely remain in some form of custody while the DA's office determines whether to officially initiate a retrial, though, as his separate Los Angeles sexual assault conviction remains intact and carries a **16-year prison term**.

Writing for the majority of New York's top court Thursday, Judge Jenny Rivera said Weinstein's trial was clouded by three so-called Molineux witnesses who testified about alleged assaults that were not part of his indictment.

Judge Rivera also said the trial court erred by saying the DA's office would be allowed to cross-examine Weinstein about these uncharged crimes and other "despicable behavior" if he took the stand, including claims that he made violent threats toward employees and physically attacked his brother.

"The only evidence against defendant was the complainants' testimony, and the result of the court's rulings, on the one hand, was to bolster their credibility and diminish defendant's character before the jury," wrote Judge Rivera. "On the other hand, the threat of a cross-examination highlighting these untested allegations undermined defendant's right to testify. The remedy for these egregious errors is a new trial."

Joining the majority were Chief Judge Rowan Wilson and midlevel appellate justices Betsy Barros and Christine M. Clark, replacing two top court judges who recused themselves from the case.

Judges Madeline Singas, Michael J. Garcia and Anthony Cannataro dissented. In a scathing opinion of her own, Judge Singas said the Molineux witnesses were necessary to establish Weinstein's alleged modus operandi for forcing nonconsensual sex, and that the court majority demonstrated "fundamental misunderstandings of sexual violence perpetrated by men known to, and with significant power over, the women they victimize."

"By whitewashing the facts to conform to a he-said/she-said narrative, by ignoring evidence of defendant's manipulation and premeditation, which clouded issues of intent, and by failing to recognize that the jury was entitled to consider defendant's previous assaults, this court has continued a disturbing trend of overturning juries' guilty verdicts in cases involving sexual violence," wrote Judge Singas.

Like the dissenting judges, multiple attorneys involved in the Weinstein case slammed the majority's decision to overturn the conviction Thursday. Cyrus Vance, the former Manhattan DA who held the post during the trial, said he was "shocked" by the ruling.

"The witness testimony admitted by the trial judge was fair and necessary to explain to the jury how and why these women were repeatedly victimized," wrote Vance, now a partner at Baker McKenzie, in a post on LinkedIn. "I am deeply grateful to and humbled by the survivors who came forward in the brightest glare of a public courtroom to tell their stories at great personal cost and trauma. The judicial system, in my opinion, has let them down today and did not advance justice."

Attorneys who represented Weinstein's alleged victims at trial also criticized the ruling. Douglas H. Wigdor of Wigdor LLP called the decision "tragic," and Lindsay Goldbrum of Outten & Golden LLP said it "unfortunately casts a dark shadow on [the witnesses'] bravery and will undoubtedly deter future sexual assault victims from coming forward."

Weinstein, a once powerful figure in Hollywood, **was indicted** in New York after public accusations of his pattern of sexual abuse energized the #MeToo movement in 2017. After more than a month of trial in January and February 2020, jurors convicted Weinstein of raping aspiring actress Jessica Mann in 2013 and assaulting former "Project Runway" assistant Miriam Haley in 2006.

A midlevel appeals court **upheld the conviction** in June 2022, but New York's outgoing Chief Judge Janet DiFiore **granted** Weinstein's long-shot bid for a hearing at the state's high court a week before she **resigned** in August 2022.

Between Judge DiFiore's decision to hear the case and Thursday's opinion overturning the New York conviction, a separate jury in Los Angeles **found Weinstein guilty** of three felony sexual assault charges for attacking an Italian model. The second California trial also featured testimony about uncharged sexual assaults.

Court of Appeals Judges Rowan D. Wilson, Jenny Rivera, Michael J. Garcia, Madeline Singas and Anthony Cannataro sat on the panel with Appellate Division Justices Betsy Barros and Christine M. Clark.

The state is represented by Steven C. Wu of the [Manhattan District Attorney's Office](#).

Weinstein is represented by Arthur L. Aidala, Barry Kamins, John Leventhal and Diana Fabi Samson of Aidala Bertuna & Kamins PC.

The case is People of the State of New York v. Harvey Weinstein, case number 2022-00112, in the Court of Appeals of the State of New York.

--Additional reporting by Frank G. Runyeon. Editing by Robert Rudinger.

Update: This story has been updated with additional details and comments.

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1 Comment

tom fawell April 25th, 2024, 9:46AM

Well, if it is OK for Hamas (according to Columbia protestors) then it seems Weinstein should also get a pass. Isn't that what they mean by "equity"?

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