

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

People v. Forston

2026 NY Slip Op 03460 · No. 2025-14360 · Decided June 3, 2026

SUMMARY

The Appellate Division, Second Department affirmed an order designating Joseph Forston a level two sex offender under the Sex Offender Registration Act. The court held that Forston failed to provide sufficient medical evidence supporting a downward departure from the presumptive risk level.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Per Curiam; Francesca E. Connolly, J.P.; Deborah A. Dowling, J.; Lillian Wan, J.; Susan Quirk, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	June 3, 2026
DOCKET	2025-14360
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed from an order of the Supreme Court, Queens County, entered after a Sex Offender Registration Act hearing, that denied his application for a downward departure from the presumptive risk level and designated him a level two sex offender.
STANDARD OF REVIEW	The court reviewed whether the defendant established an appropriate mitigating factor and supporting facts by a preponderance of the evidence, and whether the Supreme Court properly exercised its discretion in denying a downward departure.
PRECEDENTIAL VALUE	Published
PARTIES	Joseph Forston v. The People of the State of New York

TOPICS

- criminal procedure
- appellate procedure
- standard of review

PRACTICE AREAS

criminal procedure

sex offender registration

appellate procedure

QUESTIONS PRESENTED

1. Whether the defendant established an appropriate mitigating factor and the facts supporting it by a preponderance of the evidence so as to warrant a downward departure from the presumptive risk level under the Sex Offender Registration Act.
2. Whether the Supreme Court properly denied the downward-departure application and designated the defendant a level two sex offender.

HOLDINGS

1. A defendant seeking a downward departure must identify an appropriate mitigating factor that is not adequately accounted for by the Guidelines and establish the facts supporting that factor by a preponderance of the evidence. The defendant failed to meet that burden because he did not provide sufficient medical evidence that his medical condition and physical limitations reduced his risk of reoffending or that his sexual functioning was impaired.
2. The Supreme Court properly denied the defendant's application for a downward departure and designated him a level two sex offender.

KEY QUOTATIONS

*"A defendant seeking a downward departure from the presumptive risk level has the initial burden of "(1) identifying, as a matter of law, an appropriate mitigating factor, namely, a factor which tends to establish a lower likelihood of reoffense or danger to the community and is of a kind, or to a degree, that is otherwise not adequately taken into account by the Guidelines; and (2) establishing the facts in support of its existence by a preponderance of the evidence"" ([*1])*

FACTUAL BACKGROUND

The defendant was convicted upon his plea of guilty of rape in the first degree. At a Sex Offender Registration Act hearing, the Supreme Court assessed him 90 points on the risk assessment instrument and designated him a level two sex offender. The defendant sought a downward departure based on his medical condition and physical limitations, but did not provide sufficient medical evidence that those conditions reduced his risk of reoffending or impaired his sexual functioning.

PROCEDURAL HISTORY

After pleading guilty to rape in the first degree, the defendant underwent a hearing pursuant to the Sex Offender Registration Act. The Supreme Court assessed 90 points on the risk assessment instrument, denied a downward-departure application, and designated him a level two sex offender. The Appellate Division affirmed the order.

DISPOSITION

affirmed

CASES CITED

- People v. Wyatt, 89 A.D.3d 112, 128
- People v. Gillotti, 23 N.Y.3d 841, 861
- People v. Felton, 175 A.D.3d 734, 735
- People v. Jimenez, 178 A.D.3d 1099, 1101
- People v. Kumar, 242 A.D.3d 1231
- People v. Laskaris, 231 A.D.3d 1173, 1174
- People v. Parisi, 212 A.D.3d 666, 668

OPINION

PER CURIAM.

People v Forston - 2026 NY Slip Op 03460 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions People v Forston 2026 NY Slip Op 03460 June 3, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.

This decision is uncorrected and subject to revision before publication in the Official Reports. The People of the State of New York, respondent, v Joseph Forston, appellant. Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on June 3, 2026 2025-14360 Francesca E. Connolly, J.P. Deborah A. Dowling Lillian Wan Susan Quirk, JJ. Twyla Carter, New York, NY (Mariel Stein of counsel), for appellant.

Melinda Katz, District Attorney, Kew Gardens, NY (Johnnette Traill, Nancy Fitzpatrick Talcott, and MyeongHwan Cha of counsel), for respondent. [*1] DECISION & ORDER Appeal by the defendant from an order of the Supreme Court, Queens County (Kenneth C. Holder, J.), dated April 3, 2024, which, after a hearing, designated him a level two sex offender pursuant to Correction Law article 6-C.

ORDERED that the order is affirmed, without costs or disbursements. The defendant was convicted, upon his plea of guilty, of rape in the first degree. After a hearing pursuant to the Sex Offender Registration Act (Correction Law art 6-C), the Supreme Court assessed the defendant 90 points on the risk assessment instrument.

The court denied the defendant's application for a downward departure from the presumptive risk level and designated him a level two sex offender. The defendant appeals. A defendant seeking a downward departure from the presumptive risk level has the initial burden of "(1) identifying, as a

matter of law, an appropriate mitigating factor, namely, a factor which tends to establish a lower likelihood of reoffense or danger to the community and is of a kind, or to a degree, that is otherwise not adequately taken into account by the Guidelines; and (2) establishing the facts in support of its existence by a preponderance of the evidence" (*People v Wyatt*, 89 AD3d 112, 128; see Sex Offender Registration Act: Risk Assessment Guidelines and Commentary at 4 [2006] [hereinafter Guidelines]; *People v Gillotti*, 23 NY3d 841, 861).

If the defendant makes that twofold showing, the court must exercise its discretion by weighing the mitigating factor to determine whether the totality of the circumstances warrants a departure to avoid an overassessment of the defendant's dangerousness and risk of sexual recidivism (see *People v Gillotti*, 23 NY3d at 861; *People v Felton*, 175 AD3d 734, 735).

Although a debilitating illness may constitute a basis for a downward departure (see Guidelines at 5; *People v Jimenez*, 178 AD3d 1099, 1101), the defendant failed to provide sufficient medical evidence to establish by a preponderance of the evidence that his medical condition and physical limitations were sufficient to reduce his risk of reoffending (see *People v Kumar*, 242 AD3d 1231; *People v Laskaris*, 231 AD3d 1173, 1174).

Moreover, the defendant did not submit any medical evidence demonstrating that his sexual functioning had been impaired by his medical condition and, thus, failed to show that his condition resulted in an overassessment of his risk to public safety (see *People v Parisi*, 212 AD3d 666, 668; *People v Jimenez*, 178 AD3d at 1101).

Accordingly, the Supreme Court properly denied the defendant's application for a downward departure and designated him a level two sex offender. CONNOLLY, J.P., DOWLING, WAN and QUIRK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.