

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

People v. Billinger

2026 NY Slip Op 00160 (Supreme Court of the State of New York Appellate Division Second Judicial
Department 2026) · No. 2019-14658 · Decided January 14, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order designating Marvin Billinger a level three sex offender under the Sex Offender Registration Act. The court held that the Supreme Court properly assessed risk-factor points and that Billinger failed to establish grounds for a downward departure based on his response to sex offender treatment.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Colleen D. Duffy, J.P.; William G. Ford, J.; Laurence L. Love, J.; Donna-Marie E. Golia, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	January 14, 2026
DOCKET	2019-14658
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order of the Supreme Court, Kings County, entered after a Sex Offender Registration Act hearing, designating him a level three sex offender and denying his application for a downward departure to risk level two.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Marvin Billinger v. The People of the State of New York

TOPICS

- criminal procedure
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Supreme Court properly assessed 20 points under SORA risk factor 13.
2. Whether the defendant established a legally appropriate mitigating factor and the supporting facts necessary for a downward departure from the presumptive level three SORA risk designation.
3. Whether the defendant demonstrated an exceptional response to sex-offender treatment warranting a downward departure.

HOLDINGS

1. The Supreme Court properly assessed the defendant 20 points under risk factor 13.
2. A defendant seeking a downward departure must identify an appropriate mitigating factor not adequately taken into account by the Guidelines and establish the facts supporting that factor by a preponderance of the evidence.
3. A defendant's response to sex-offender treatment may support a downward departure only when the response is exceptional, and the defendant did not prove by a preponderance of the evidence that his response was exceptional.

KEY QUOTATIONS

“In establishing a defendant's risk level pursuant to SORA, the People bear the burden of establishing facts supporting the determination sought by clear and convincing evidence”

“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”

“If the defendant makes that twofold showing, the SORA court must exercise its discretion by weighing the mitigating factor to determine whether the totality of the circumstances warrants a departure to avoid an over-assessment of the defendant's dangerousness and risk of sexual recidivism”

FACTUAL BACKGROUND

The defendant was convicted upon his plea of guilty to rape in the first degree. At the SORA hearing, the Supreme Court assessed 130 points, including 20 points under risk factor 13, resulting in a presumptive risk level three designation. The defendant sought a downward departure based on mitigating circumstances, including his response to sex-offender treatment, but the court denied the application.

PROCEDURAL HISTORY

Billinger pleaded guilty to rape in the first degree. Following a SORA hearing, the Supreme Court assessed 130 points on the risk assessment instrument, designated him a presumptive level three sex offender, and denied a

downward departure. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Howell, 213 AD3d 708, 708
- People v. Bautista, 210 AD3d 1020, 1021
- People v. Gavalo, 235 AD3d 785, 786
- People v. Williams, 219 AD3d 763, 764
- People v. Hernandez, 236 AD3d 835, 836
- People v. Cousin, 209 AD3d 1047, 1048
- People v. Gillotti, 23 NY3d 841, 860
- People v. Coleman, 225 AD3d 792, 794
- People v. Gillotti, 23 NY3d 841, 861
- People v. Stafford, 240 AD3d 718, 719

OPINION

PER CURIAM.

People v Billinger (2026 NY Slip Op 00160) People v Billinger 2026 NY Slip Op 00160 Decided on January 14, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on January 14, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department COLLEEN D. DUFFY, J.P.

WILLIAM G. FORD LAURENCE L. LOVE DONNA-MARIE E. GOLIA, JJ. 2019-14658 [*1]The People of the State of New York, respondent, v Marvin Billinger, appellant. Twyla Carter, New York, NY (Robin Richardson of counsel), for appellant. Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove, Morgan J. Dennehy, and Brian Umana of counsel), for respondent. DECISION & ORDER Appeal by the defendant from an order of the Supreme Court, Kings County (Guy J. Mangano, Jr., J.), entered December 18, 2019, which, after a hearing, designated him a level three 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 (Penal Law § 130.35[1]). After a hearing pursuant to the Sex Offender Registration Act (SORA) (Correction Law art 6-C), the Supreme Court assessed the defendant a total of 130 points on the risk assessment instrument,

resulting in a presumptive risk level three designation, and denied the defendant's application for a downward departure to risk level two.

The defendant appeals. "In establishing a defendant's risk level pursuant to SORA, the People bear the burden of establishing facts supporting the determination sought by clear and convincing evidence" (*People v Howell*, 213 AD3d 708, 708 [internal quotation marks omitted], quoting *People v Bautista*, 210 AD3d 1020, 1021; see *Correction Law* § 168-n[3]).

Here, contrary to the defendant's contention, the Supreme Court properly assessed 20 points under risk factor 13 (see *People v Gavalo*, 235 AD3d 785, 786; *People v Williams*, 219 AD3d 763, 764). "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 Hernandez*, 236 AD3d 835, 836 [internal quotation marks omitted], quoting *People v Cousin*, 209 AD3d 1047, 1048; see *Sex Offender Registration Act: Risk Assessment Guidelines and Commentary* [hereinafter *Guidelines*] at 4 [2006]; *People v Gillotti*, 23 NY3d 841, 860).

"If the defendant makes that twofold showing, the SORA court must exercise its discretion by weighing the mitigating factor to determine whether the totality of the circumstances warrants a departure to avoid an over-assessment of the defendant's dangerousness and risk of sexual recidivism" (*People v Coleman*, 225 AD3d 792, 794 [internal quotation marks omitted]; see *People v Gillotti*, 23 NY3d at 861).

Here, the defendant failed to establish that a downward departure was warranted. [*2]While a defendant's response to sex offender treatment may qualify as a ground for a downward departure where the response is "exceptional" (*Guidelines* at 17), the defendant failed to demonstrate by a preponderance of the evidence that his response to treatment was exceptional (see *People v Stafford*, 240 AD3d 718, 719; *People v Coleman*, 225 AD3d at 794).

Accordingly, the Supreme Court properly designated the defendant a level three sex offender. DUFFY, J.P., FORD, LOVE and GOLIA, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court