

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

People v. Cambarmatute

2025 NY Slip Op 06629 (Supreme Court of the State of New York Appellate Division Second Judicial
Department 2025) · No. 2024-05084 · Decided November 26, 2025

SUMMARY

The Appellate Division, Second Department affirmed an order designating Eduin Cambarmatute a level two sex offender under the Sex Offender Registration Act. The court held that Cambarmatute failed to establish an exceptional response to treatment or another basis warranting 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	Francesca E. Connolly, J.P.; Paul Wooten, J.; Lourdes M. Ventura, J.; Phillip Hom, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	November 26, 2025
DOCKET	2024-05084
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed from an order of the Suffolk County Court that, after a Sex Offender Registration Act hearing, designated him a level two sex offender and denied his application for a downward departure.
STANDARD OF REVIEW	The court reviewed whether the defendant established an appropriate mitigating factor and the facts supporting it by a preponderance of the evidence, and whether a downward departure was warranted in the court's discretion based on the totality of the circumstances.
PRECEDENTIAL VALUE	Published
PARTIES	Eduin Cambarmatute v. The People of the State of New York

TOPICS

criminal procedure

appellate procedure

standard of review

PRACTICE AREAS

criminal law

appellate practice

sex offender registration

QUESTIONS PRESENTED

1. Whether the defendant established an appropriate mitigating factor, and facts supporting that factor by a preponderance of the evidence, sufficient to permit a downward departure from the presumptive risk level under the Sex Offender Registration Act.
2. Whether the defendant's response to treatment was exceptional enough to support a downward departure.
3. Whether the defendant's disciplinary record while incarcerated supported a downward departure when the Guidelines had not assessed additional points for that conduct.

HOLDINGS

1. A defendant seeking a downward departure from a presumptive sex-offender risk level must first identify an appropriate mitigating factor that tends to establish a lower likelihood of reoffense or danger to the community and is not adequately considered by the Guidelines, and must establish the facts supporting that factor by a preponderance of the evidence.
2. The defendant did not establish by a preponderance of the evidence that his response to sex-offender and substance-abuse treatment was exceptional; therefore, treatment response did not warrant a downward departure.
3. The defendant's disciplinary record while incarcerated was adequately taken into account by the Guidelines because he was not assessed additional points for conduct while confined; the record therefore did not support a downward departure.

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])*

*"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"" ([*1])*

FACTUAL BACKGROUND

The defendant was convicted upon his guilty plea of criminal sexual act in the first degree and sexual abuse in the first degree. At a Sex Offender Registration Act hearing, the County Court assessed him 100 points under the

risk assessment instrument, resulting in a presumptive level two designation. He sought a downward departure based on his response to sex-offender and substance-abuse treatment and his disciplinary record while incarcerated, but the court denied the request.

PROCEDURAL HISTORY

After pleading guilty to criminal sexual act in the first degree and sexual abuse in the first degree, the defendant underwent a risk-level hearing under the Sex Offender Registration Act. The County Court assessed 100 points on the risk assessment instrument, designated him a presumptive level two sex offender, denied a downward departure, and entered a level two designation. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Wyatt, 89 A.D.3d 112, 128
- People v. Gillotti, 23 N.Y.3d 841, 861
- People v. Smith, 237 A.D.3d 1230, 1231
- People v. Alvarado, 173 A.D.3d 909, 910
- People v. Del-Carmen, 186 A.D.3d 878, 879
- People v. Wallace, 144 A.D.3d 775, 776
- People v. Skipper, 235 A.D.3d 671, 672
- People v. Gonsales, 203 A.D.3d 760, 761
- People v. Hernandez, 225 A.D.3d 903, 904
- People v. Watts, 225 A.D.3d 638, 639

OPINION

PER CURIAM.

People v Cambarmatute (2025 NY Slip Op 06629) People v Cambarmatute 2025 NY Slip Op 06629 Decided on November 26, 2025 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 November 26, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department FRANCESCA E. CONNOLLY, J.P.

PAUL WOOTEN LOURDES M. VENTURA PHILLIP HOM, JJ. 2024-05084 [*1]The People of the State of New York, respondent, v Eduin Cambarmatute, appellant. Laurette D. Mulry, Riverhead, NY (Felice B. Milani of counsel), for appellant. Raymond A. Tierney, District Attorney, Riverhead, NY (Thomas C. Costello of counsel), for respondent. DECISION & ORDER

Appeal by the defendant from an order of the County Court, Suffolk County (Karen M. Wilutis, J.), dated June 7, 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 criminal sexual act in the first degree and sexual abuse in the first degree. After a hearing pursuant to the Sex Offender Registration Act (Correction Law art 6-C), the County Court assessed the defendant 100 points on the risk assessment instrument, rendering him a presumptive level two sex offender, denied the defendant's application for a downward departure from the presumptive risk level, and designated the defendant 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" (*People v Smith*, 237 AD3d 1230, 1231, quoting *People v Alvarado*, 173 AD3d 909, 910; see *People v Gillotti*, 23 NY3d at 861).

Here, the defendant failed to demonstrate that a downward departure was warranted. "While 'a defendant's response to treatment may qualify as a ground for a downward departure where the response is exceptional'" (*People v Del-Carmen*, 186 AD3d 878, 879, quoting *People v Wallace*, 144 AD3d 775, 776), the defendant failed to demonstrate by a preponderance of the evidence that his response to sex offender and substance abuse treatment was exceptional (see *People v Skipper*, 235 AD3d 671, 672; *People v Gonsales*, 203 AD3d 760, 761).

Moreover, the defendant's disciplinary record while incarcerated was adequately taken into account by the [*2]Guidelines, since he was not assessed additional points for conduct while confined (see *People v Hernandez*, 225 AD3d 903, 904; *People v Watts*, 225 AD3d 638, 639).

Accordingly, the County Court properly designated the defendant a level two sex offender. CONNOLLY, J.P., WOOTEN, VENTURA and HOM, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

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