

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

People v. Canady

2021 NY Slip Op 03618 (App. Div. 2021) · No. 2020-06415 · Decided June 9, 2021

SUMMARY

The Appellate Division, Second Department, reversed an order designating Quayshaun Canady a level three sex offender under the Sex Offender Registration Act. The court held that the People failed to establish by clear and convincing evidence the points assessed for sexual contact and a continuing course of sexual misconduct, reducing the total score and designating Canady a level two sex offender.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Leonard B. Austin, J.; Betsy Barros, J.; Valerie Brathwaite Nelson, J.; Linda Christopher, J.
JURISDICTION	New York
DECIDED	June 9, 2021
DOCKET	2020-06415
DISPOSITION	reversed
PROCEDURAL POSTURE	The defendant appealed from an order of the Supreme Court, Queens County, entered after a Sex Offender Registration Act hearing, that designated him a level three sex offender.
STANDARD OF REVIEW	The People must establish facts supporting the requested SORA risk-level determination by clear and convincing evidence. The Appellate Division reviewed the challenged risk-factor assessments and reversed on the facts.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Quayshaun Canady v. The People of the State of New York

TOPICS

- criminal procedure
- appellate procedure
- preservation of error
- standard of review

PRACTICE AREAS

criminal procedure

sex offender registration

appellate procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court properly assessed 25 points under SORA risk factor 2 for sexual contact with a victim.
2. Whether the Supreme Court properly assessed 20 points under SORA risk factor 4 for a continuing course of sexual misconduct.
3. Whether the defendant preserved his challenge to the assessment of 20 points under risk factor 7 for establishing a relationship for the purpose of victimization.
4. Whether the defendant's corrected point total required designation as a level two rather than level three sex offender.

HOLDINGS

1. In establishing a defendant's risk level pursuant to SORA, the People bear the burden of establishing facts supporting the requested determination by clear and convincing evidence.
2. The defendant's challenge to the assessment of 20 points under risk factor 7 was unpreserved because he did not oppose the People's request for those points at the SORA hearing.
3. The Supreme Court improperly assessed 25 points under risk factor 2 because the People failed to establish by clear and convincing evidence that the defendant engaged in sexual contact with the victims or shared the victims' clients' intent to engage in sexual contact under an accessorial-liability theory.
4. The Supreme Court improperly assessed 20 points under risk factor 4 because the People failed to establish by clear and convincing evidence that the defendant engaged in a continuing course of sexual misconduct.
5. After subtracting 45 improperly assessed points from the 135-point total, the defendant's score fell within the range for a level two sex offender, requiring designation as a level two offender.

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” (*1)*

FACTUAL BACKGROUND

The defendant was convicted upon his guilty plea of sex trafficking. At the ensuing SORA hearing, the Supreme Court assessed 135 points, including 25 points for sexual contact with a victim and 20 points for a continuing course of sexual misconduct, and designated him a level three sex offender. The Appellate Division concluded that the People had not established by clear and convincing evidence that the defendant engaged in sexual contact with the victims or shared the clients' intent under an accessorial-liability theory.

PROCEDURAL HISTORY

After pleading guilty to sex trafficking, the defendant underwent a SORA risk-level hearing in Supreme Court, Queens County. The court assessed 135 points and designated him a level three sex offender. On appeal, he challenged the assessment of points under several risk factors; the Appellate Division reversed and designated him a level two sex offender.

DISPOSITION

reversed

CASES CITED

- People v. Levy, 192 A.D.3d 928, 929
- People v. Guadeloupe, 173 A.D.3d 910, 911
- People v. Gillotti, 23 N.Y.3d 841, 854
- People v. Pettigrew, 14 N.Y.3d 406, 408
- People v. Blue, 186 A.D.3d 1088, 1090
- People v. Dilillo, 162 A.D.3d 915, 916
- People v. S.G., 4 Misc. 3d 563, 569-571 (Sup. Ct., N.Y. County)

OPINION

PER CURIAM.

People v Canady (2021 NY Slip Op 03618) People v Canady 2021 NY Slip Op 03618 Decided on June 9, 2021 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 June 9, 2021 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department MARK C. DILLON, J.P.

LEONARD B. AUSTIN BETSY BARROS VALERIE BRATHWAITE NELSON LINDA CHRISTOPHER, JJ. 2020-06415 [*1]The People of the State of New York, respondent, vQuayshaun Canady, appellant. Russell Rothberg, Lynbrook, NY, for appellant. Melinda Katz, District Attorney, Kew Gardens, NY (Johnnette Traill, Ellen C. Abbot, and Aharon Diaz of counsel), for respondent. DECISION & ORDER Appeal by the defendant from an order of the Supreme Court, Queens County (Barry Kron, J.), dated June 6, 2019, which, after a hearing, designated him a level three sex offender pursuant to Correction Law article 6-C.

ORDERED that the order is reversed, on the facts, without costs or disbursements, and the defendant is designated a level two sex offender. The defendant was convicted, upon his plea of guilty, of sex trafficking. Following a hearing to determine the defendant's risk level under the Sex Offender Registration Act (Correction Law art 6-C; hereinafter SORA), the Supreme Court, in effect, assessed the defendant 135 points and designated him a level three sex offender.

On appeal, the defendant challenges the assessment of points under certain risk categories. "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 Levy, 192 AD3d 928, 929; see Correction Law § 168-n[3]; People v Guadeloupe, 173 AD3d 910, 911).

The defendant's contention that the Supreme Court improperly assessed 20 points under risk factor 7 for establishing a relationship for the purpose of victimization is unpreserved for appellate review, as he did not oppose the People's request for the scoring of these points at the SORA hearing (see People v Gillotti, 23 NY3d 841, 854). Contrary to the People's contentions, the Supreme Court improperly assessed 25 points under risk factor 2 (sexual contact with victim) and 20 points under risk factor 4 (continuing course of sexual misconduct), as the People failed to establish by clear and convincing evidence (see People v Pettigrew, 14 NY3d 406, 408) that the defendant engaged in sexual contact with the victims or that, under the theory of accessorial liability, he shared the intent of the victims' clients in engaging in sexual contact (see People v Blue, 186 AD3d 1088, 1090; People v Dilillo, 162 AD3d 915, 916; People v S.G., 4 Misc 3d 563, 569-571 [Sup Ct, NY County]).

Based on the foregoing, 45 points should be subtracted from the total risk assessment [*2]of 135 points, which places the defendant's point score within the range of a level two sex offender. Accordingly, we reverse the order appealed from and designate the defendant a level two sex offender. DILLON, J.P., AUSTIN, BARROS, BRATHWAITE NELSON and CHRISTOPHER, JJ., concur.

ENTER: Aprilanne Agostino Clerk of the Court