

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

People v. Wagers

2025 NY Slip Op 06630 (N.Y. Ct. App. 2025) · No. 2024-01842 · Decided November 26, 2025

SUMMARY

The Appellate Division, Second Department, affirmed an amended order designating Walter Wagers a level three sex offender under the Sex Offender Registration Act. The court upheld the assessment of risk-factor points and the upward departure from a presumptive level two designation, citing diagnostic impressions, impulsivity, sexual preoccupation, and similar conduct involving another victim. The court also upheld denial of the defendant's request for a downward departure.

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.; William G. Ford, J.; Deborah A. Dowling, J.; Susan Quirk, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	November 26, 2025
DOCKET	2024-01842
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed from an amended order of the Suffolk County Court, entered after a SORA hearing, designating him a level three sex offender.
STANDARD OF REVIEW	The Appellate Division reviewed the County Court's SORA risk-level determinations and departure rulings for whether the court properly applied the governing standards and providently exercised its discretion.
PRECEDENTIAL VALUE	Published
PARTIES	Walter Wagers 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 County Court properly assessed points under SORA risk factors 7 and 8.
2. Whether the County Court improperly applied an automatic override to designate the defendant a presumptive level three offender.
3. Whether the People established aggravating factors not adequately accounted for by the SORA Guidelines to justify an upward departure from presumptive risk level two to level three.
4. Whether the defendant established a mitigating factor not adequately accounted for by the Guidelines to justify a downward departure to level one.
5. Whether the notice of appeal from the earlier order could be deemed a premature notice of appeal from the amended order.

HOLDINGS

1. The court deemed the notice of appeal from the February 2, 2024 order to be a premature notice of appeal from the September 2, 2025 amended order.
2. The County Court properly assessed points under risk factor 7 because the People established by clear and convincing evidence that the victim was a stranger to the defendant and that the relationship was established primarily for victimization.
3. The County Court properly assessed points under risk factor 8 based on the defendant's age when he first exchanged sexually explicit messages and photographs with the 15-year-old victim in connection with the offense.
4. The County Court did not apply an automatic override to designate the defendant a presumptive level three offender.
5. The County Court providently exercised its discretion in granting the People's application for an upward departure from presumptive risk level two to level three.
6. The defendant failed to establish entitlement to a downward departure because he did not prove by a preponderance of the evidence an appropriate mitigating factor not adequately accounted for by the Guidelines.

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])

“Where the People seek an upward departure, they must demonstrate that there exists an aggravating factor 'of a kind, or to a degree, that is otherwise not adequately taken into account by the [G]uidelines'” ([*2])

*“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” ([*2])*

FACTUAL BACKGROUND

The defendant exchanged sexually explicit messages and photographs on Tumblr with a 15-year-old victim whom he initially did not know, and later engaged in sexual intercourse with the victim. The County Court assessed 90 points under the SORA risk assessment instrument, including points under risk factors 7 and 8. The People also presented evidence of diagnostic impressions involving fetish disorder and unspecified paraphilic disorder, the defendant's sexual interest in adolescent females, impulsivity and lack of empathy, and similar conduct involving a second victim.

PROCEDURAL HISTORY

The County Court assessed the defendant 90 points on the SORA risk assessment instrument, making him presumptively a level two offender. It granted the People's application for an upward departure to level three, denied the defendant's application for a downward departure to level one, and entered an amended order. The Appellate Division deemed the earlier notice of appeal premature under CPLR 5520(c) and affirmed the amended order.

DISPOSITION

affirmed

CASES CITED

- People v. Polanco-Lopez, 239 AD3d 778, 779
- People v. Levy, 192 AD3d 928, 929
- People v. Vasquez, 189 AD3d 1480, 1481
- People v. Luna, 187 AD3d 805, 806
- People v. Patrick, 219 AD3d 848, 849
- People v. Powell, 188 AD3d 734, 734
- People v. Rivera, 234 AD3d 998
- People v. Long, 129 AD3d 687
- People v. Wilkerson, 214 AD3d 683, 684
- People v. Gillotti, 23 NY3d 841, 861
- People v. Terrell, 237 AD3d 982, 983
- People v. DeDona, 102 AD3d 68, 68
- People v. Patel, 192 AD3d 1052
- People v. Diaz, 151 AD3d 891
- People v. Medina, 209 AD3d 775, 776
- People v. Jones, 196 AD3d 515

- People v. Sofo, 168 AD3d 891, 891-892
- People v. Sang Wong, 2025 NY Slip Op 05835
- People v. Emery, 204 AD3d 944, 945
- People v. Pareja-Hidalgo, 222 AD3d 892, 893
- People v. Lorgo, 2025 NY Slip Op 05707

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/supreme-court-of-the-state-of-new-york-appellate-division-second-department-supreme-court-of-the-sta/2025/people-v-wagers-9uz1es6d>