

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

People v. Wilcox

2025 N.Y. Slip Op. 07353 (App. Div. 2025) · No. CV-24-0545 · Decided December 31, 2025

SUMMARY

The Appellate Division, Third Department affirmed an order classifying Kyle E. Wilcox as a risk level three sex offender under the Sex Offender Registration Act. The court upheld the assessment of points for establishing a relationship with the victim for purposes of victimization and unsatisfactory conduct while under supervision, declined to reach a challenge to another risk factor, and affirmed the denial of a downward departure. The court also held that the recusal claim was unpreserved.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Pritzker, J.P.; Fisher, J.; McShan, J.; Powers, J.; Mackey, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	December 31, 2025
DOCKET	CV-24-0545
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order of the Chemung County Court classifying him as a risk level three sex offender under the Sex Offender Registration Act and denying his request for a downward departure.
STANDARD OF REVIEW	The People must prove facts supporting risk-assessment points by clear and convincing evidence. The denial of a downward departure is reviewed for abuse of discretion. A claim regarding judicial recusal is unpreserved absent a motion or objection in the trial court.
PRECEDENTIAL VALUE	Published appellate opinion
PARTIES	Kyle E. Wilcox 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 County Court properly assessed 20 points under risk factor 7 for establishing a relationship with the victim for the purpose of victimization.
2. Whether County Court properly assessed 10 points under risk factor 13 for unsatisfactory conduct while under supervision.
3. Whether County Court adequately considered and properly denied defendant's request for a downward departure from a presumptive risk level three classification.
4. Whether defendant preserved his claim that the County Court judge should have recused himself upon remittal.

HOLDINGS

1. The assessment of 20 points under risk factor 7 was supported because defendant used an intentionally developed relationship with the 13-year-old victim to facilitate repeated overnight stays and sexual victimization.
2. The assessment of 10 points under risk factor 13 was proper where defendant's parole was revoked for each of two violations and at least one revocation resulted in a two-year term of incarceration.
3. The court did not reach defendant's challenge to the 20 points assessed under risk factor 4 because, even without those points, defendant would remain a presumptive risk level three sex offender.
4. County Court did not abuse its discretion in denying defendant's request for a downward departure from risk level three.
5. Defendant's claim that the County Court judge should have recused himself was unpreserved because defendant made no motion or objection seeking recusal either in the prior appeal or at the new hearing.

KEY QUOTATIONS

*“In order to assess points in determining a defendant’s risk level classification, the People bear the burden of proving facts supporting such point assessment by clear and convincing evidence” (*2)*

*“the court then must make a discretionary determination as to whether the overall circumstances warrant a departure to prevent an overassessment of defendant's dangerousness and risk of sexual recidivism” (*2)*

FACTUAL BACKGROUND

Defendant pleaded guilty in 2017 to attempted rape in the second degree and was required to register under the Sex Offender Registration Act. The risk-assessment instrument presumptively classified him as a level three sex offender, and County Court assessed 130 points, including points for establishing a relationship with the victim for purposes of victimization and unsatisfactory conduct while under parole supervision. Defendant also sought a downward departure based on mitigating circumstances, including a prior youthful offender adjudication,

parole supervision, and programming, but County Court relied in part on his lack of acceptance of responsibility and victim-blaming statements in denying the request.

PROCEDURAL HISTORY

After defendant's initial risk-level-three classification, the Appellate Division remitted the matter for a new hearing because County Court had failed to set forth adequate findings of fact and conclusions of law regarding the point assessment. On remittal, County Court again classified defendant as a risk level three sex offender based on 130 points and denied a downward departure. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Dority, 234 A.D.3d 1211, 1212 (3d Dep't 2025)
- People v. Ortiz, 217 A.D.3d 1290, 1291 (3d Dep't 2023)
- People v. Lashomb, 161 A.D.3d 1465, 1466-1467 (3d Dep't 2018)
- People v. Middlemiss, 153 A.D.3d 1096, 1098 (3d Dep't 2017), leave denied, 30 N.Y.3d 906 (2017)
- People v. Roney, 80 A.D.3d 909, 911 (3d Dep't 2011)
- People v. Uhle, 221 A.D.3d 1199, 1200 n.1 (3d Dep't 2023)
- People v. Glowinski, 208 A.D.3d 1392, 1392-1393 (3d Dep't 2022)
- People v. Pardee, 228 A.D.3d 1142, 1143 (3d Dep't 2024), leave denied, 42 N.Y.3d 909 (2024)
- People v. Lane, 201 A.D.3d 1266, 1267 (3d Dep't 2022)
- People v. Eason, 233 A.D.3d 1194, 1196 (3d Dep't 2024), leave denied, 43 N.Y.3d 903 (2025)
- People v. Butler, 232 A.D.3d 935, 937 (3d Dep't 2024), leave denied, 43 N.Y.3d 929 (2025)
- People v. Gillotti, 23 N.Y.3d 841, 861 (2014)
- People v. Sanders, 228 A.D.3d 1184, 1186 (3d Dep't 2024)
- People v. Coston, 238 A.D.3d 1341, 1346-1347 (3d Dep't 2025), leave denied, 44 N.Y.3d 992 (2025)
- People v. Higgins, 211 A.D.3d 1186, 1186 (3d Dep't 2022)
- People v. Wilcox, 221 A.D.3d 1370 (3d Dep't 2023)

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