

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

People v. Corinaldi

2026 NY Slip Op 02292 (N.Y. Ct. App. 2026) · No. 2025-10892 · Decided April 15, 2026

SUMMARY

The New York Appellate Division, Second Department, affirmed an order designating Brandon Corinaldi a level two sex offender under Correction Law article 6-C. The court held that his arguments for a downward departure were either unpreserved, unsupported by a preponderance of the evidence, or otherwise without merit.

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.; Linda Christopher, J.; Barry E. Warhit, J.; Elena Goldberg Velazquez, J.
JURISDICTION	New York Supreme Court, Appellate Division, Second Department
DECIDED	April 15, 2026
DOCKET	2025-10892
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order of the Supreme Court, Queens County, entered after a Sex Offender Registration Act hearing, designating him a level two sex offender and denying his application for a downward departure from the presumptive risk level.
STANDARD OF REVIEW	The court reviewed the denial of a downward departure under the Sex Offender Registration Act for abuse of discretion after determining whether the defendant identified an appropriate mitigating factor and established its factual basis by a preponderance of the evidence. An unpreserved contention was not reviewable on appeal.
PRECEDENTIAL VALUE	published
PARTIES	Brandon Corinaldi v. The People of the State of New York

TOPICS

criminal procedure

appellate procedure

preservation of error

standard of review

PRACTICE AREAS

criminal law

sex offender registration

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QUESTIONS PRESENTED

1. Whether the defendant's claim that the victim's lack of consent was attributable solely to the victim's age supported a downward departure from the presumptive risk level.
2. Whether the defendant established that his response to treatment was exceptional and warranted a downward departure.
3. Whether the Supreme Court properly denied the downward-departure application and designated the defendant a level two sex offender.

HOLDINGS

1. A defendant seeking a downward departure from the presumptive risk level must identify an appropriate mitigating factor that tends to establish a lower likelihood of reoffense or danger to the community and is not adequately accounted for by the Guidelines, and must establish the facts supporting that factor by a preponderance of the evidence. If that showing is made, the court must weigh the factor and determine whether the totality of the circumstances warrants a departure.
2. The defendant's contention that he was entitled to a downward departure because the victim's lack of consent resulted only from the victim's age was unpreserved for appellate review; in any event, a downward departure was not warranted in light of, among other things, the age disparity between the 30-year-old defendant and the 14-year-old victim.
3. Although a defendant's response to treatment may qualify as a ground for a downward departure when the response is exceptional, the defendant failed to prove by a preponderance of the evidence that his response to treatment was exceptional.

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 pleaded guilty to criminal sexual act in the second degree involving a 14-year-old victim when the defendant was 30 years old. At the Sex Offender Registration Act hearing, the Supreme Court determined that the defendant was presumptively a level two sex offender. The defendant sought a downward departure based on the victim's age-related inability to consent and his response to treatment, but did not establish a qualifying exceptional response to treatment by a preponderance of the evidence.

PROCEDURAL HISTORY

The defendant pleaded guilty to criminal sexual act in the second degree. Following a hearing under Correction Law article 6-C, the Supreme Court found him to be a presumptive level two sex offender, denied his application for a downward departure, and designated him a level two sex offender. 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. Khan, 182 A.D.3d 613, 614
- People v. Ramirez, 214 A.D.3d 1008, 1010
- People v. Saul, 220 A.D.3d 892, 894
- People v. Wallace, 144 A.D.3d 775, 776
- People v. Cambarmatute, 243 A.D.3d 930, 931
- People v. Kumar, 242 A.D.3d 1231, 1232