

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

People v. Banister

2025 NY Slip Op 06628 (N.Y. Ct. App. 2025) · No. 2024-02614 · Decided November 26, 2025

SUMMARY

The New York Appellate Division, Second Department, affirmed an order designating Brian Banister a level three sex offender under the Sex Offender Registration Act. The court upheld the assessment of risk-assessment points and concluded that Banister failed to establish grounds for a downward departure from the presumptive risk level.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	Angela G. Iannacci, J.P.; Lara J. Genovesi, J.; Carl J. Landicino, J.; Laurence L. Love, J.
JURISDICTION	New York Appellate Division, Second Department
DECIDED	November 26, 2025
DOCKET	2024-02614
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed from a County Court order entered after a Sex Offender Registration Act hearing that adjudicated him a level three sex offender and denied his application for a downward departure.
STANDARD OF REVIEW	The Appellate Division reviewed whether the County Court properly assessed SORA points and denied a downward departure. The People had to establish facts supporting the risk-level determination by clear and convincing evidence; the defendant had to establish an appropriate mitigating factor and supporting facts by a preponderance of the evidence to obtain a downward-departure analysis.
PRECEDENTIAL VALUE	Published
PARTIES	Brian Banister v. The People of the State of New York

TOPICS

criminal procedure

appellate procedure

evidence

standard of review

PRACTICE AREAS

criminal procedure

sex offender registration

appellate procedure

evidence

QUESTIONS PRESENTED

1. Whether the County Court properly assessed points under SORA risk factors 9, 11, and 13.
2. Whether the defendant established a legally appropriate mitigating factor and supporting facts warranting a downward departure from the presumptive level three risk designation.

HOLDINGS

1. The County Court properly assessed 15 points for a prior felony conviction, 15 points for a history of drug or alcohol abuse, and 20 points for unsatisfactory conduct while confined involving sexual misconduct.
2. The defendant was not entitled to a downward departure because he failed to identify and establish the required mitigating factor and supporting facts.

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” (at 1)

“An offender 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 not otherwise taken into account by the Guidelines, and (2) establishing the facts in support of its existence by a preponderance of the evidence” (at 2)

FACTUAL BACKGROUND

The defendant had pleaded guilty to four counts of unlawful imprisonment in the first degree, sexual abuse in the first degree, and kidnapping in the second degree, among other offenses. At the SORA hearing, the County Court assessed 170 points, including points for a prior felony conviction, a history of drug or alcohol abuse, and unsatisfactory conduct while confined involving sexual misconduct. The proof included a case summary, evidence of prior cocaine and marihuana use, drug-possession convictions and disciplinary sanctions, completion of substance-abuse treatment in prison, and the defendant's acceptance of responsibility.

PROCEDURAL HISTORY

Following his guilty plea and convictions for multiple offenses, including unlawful imprisonment, sexual abuse, and kidnapping, the defendant underwent a SORA risk-level hearing in Suffolk County Court. The County Court assessed 170 points, designated him a level three sex offender, and denied a downward-departure application. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Polanco-Lopez, 239 A.D.3d 778, 779
- People v. Mingo, 12 N.Y.3d 563, 572-573
- People v. Mizrahi, 237 A.D.3d 980, 981
- People v. Camacho-Gutierrez, 210 A.D.3d 811, 812
- People v. Mohansingh, 199 A.D.3d 945
- People v. Vasquez, 197 A.D.3d 1185, 1186
- People v. Perez, 199 A.D.3d 946
- People v. Selby, 191 A.D.3d 813
- People v. Curry, 158 A.D.3d 52, 58
- People v. Gillotti, 23 N.Y.3d 841, 861
- People v. Bigelow, 175 A.D.3d 1443
- People v. Musarra, 240 A.D.3d 624, 624-625
- People v. Contreras, 233 A.D.3d 807, 808
- People v. Fleming, 238 A.D.3d 1078