

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

People v. Williams

2026 NY Slip Op 02426 (Supreme Court of the State of New York Appellate Division Second Judicial
Department 2026) · No. 2022-01996 · Decided April 22, 2026

SUMMARY

The Appellate Division, Second Department affirmed an order designating Benjamin Williams a level two sex offender under the Sex Offender Registration Act. The court held that the Supreme Court properly denied a downward departure, citing the duration and nature of the child sexual abuse material possessed and shared, and held that additional mitigating factors were either unpreserved or adequately accounted for by the Guidelines.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Lara J. Genovesi, J.P.; Linda Christopher, J.; Lillian Wan, J.; Donna-Marie E. Golia, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	April 22, 2026
DOCKET	2022-01996
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order of the Supreme Court, Kings County, entered after a Sex Offender Registration Act hearing, that designated him a level two sex offender and denied his application for a downward departure from the presumptive risk level.
STANDARD OF REVIEW	Whether the SORA court providently exercised its discretion in denying a downward departure from the presumptive risk level.
PRECEDENTIAL VALUE	Published
PARTIES	Benjamin Williams v. The People of the State of New York

TOPICS

criminal procedure

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preservation of error

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PRACTICE AREAS

criminal procedure

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QUESTIONS PRESENTED

1. Whether the defendant established an appropriate mitigating factor and facts warranting a downward departure from the presumptive SORA risk level.
2. Whether the defendant's possession and sharing of child sexual-abuse material warranted denial of a downward departure despite possible overassessment under risk factors 3 and 7.
3. Whether the defendant's 80-point score, lack of prior criminal history, acceptance of responsibility, and probation supervision warranted a downward departure.
4. Whether the defendant's unraised mitigating-factor arguments were preserved for appellate review.

HOLDINGS

1. A defendant seeking a downward departure must first identify an appropriate mitigating factor not adequately accounted for by the SORA Guidelines and establish its factual basis by a preponderance of the evidence. If that showing is made, the SORA court must exercise its discretion by weighing the factor against the totality of the circumstances to determine whether departure is warranted.
2. The Supreme Court providently exercised its discretion in denying a downward departure because the length of time the defendant viewed child pornography, the number and nature of the images and video files, and his sharing of the material with others outweighed the asserted mitigating considerations.
3. The fact that the defendant's 80-point total fell at the lower end of the risk level two designation did not itself warrant a downward departure.
4. The defendant's arguments based on mitigating factors that he did not raise at the SORA hearing were unpreserved. In any event, lack of prior criminal history, acceptance of responsibility, and probation supervision were adequately accounted for by the Guidelines and did not warrant departure.

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 SORA court must exercise its discretion by weighing the mitigating factor to determine whether the totality of the circumstances warrants a departure to avoid an over-assessment of the defendant's dangerousness and risk of sexual recidivism” ([*1])*

FACTUAL BACKGROUND

The defendant was convicted upon his guilty plea of possessing a sexual performance by a child. At the SORA hearing, the court assessed 80 points on the risk assessment instrument and considered the length of time he had viewed child pornography, the number and nature of the images and video files, and his sharing of the material with others. The court designated him a level two sex offender and denied a downward departure.

PROCEDURAL HISTORY

The defendant pleaded guilty to possessing a sexual performance by a child. Following a SORA hearing, the Supreme Court assessed 80 points, denied a downward departure, and designated him a level two sex offender. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Coleman, 225 AD3d 792, 794
- People v. Downes, 216 AD3d 1183, 1183-1184
- People v. Gillotti, 23 NY3d 841, 860-861
- People v. Oyola, 217 AD3d 791, 792
- People v. Smith, 187 AD3d 1228, 1229
- People v. Fernandez, 219 AD3d 760, 763
- People v. Goldman, 150 AD3d 905, 907
- People v. Rucano, 213 AD3d 709, 711
- People v. Infantino, 215 AD3d 768, 770-771
- People v. Bigelow, 175 AD3d 1443, 1444
- People v. Laskaris, 231 AD3d 1173, 1174
- People v. Peoples, 189 AD3d 1282, 1282-1283

OPINION

PER CURIAM.

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April 22, 2026

Appellate Division,
Second Department

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This decision is uncorrected and subject to revision before
publication in the Official Reports.

The People of the State of New York,
respondent,

v

Benjamin Williams, appellant.

Twyla Carter, New York, NY (Elizabeth Batkin of counsel), for appellant.

Supreme Court of the State of New York, Appellate Division, Second Judicial Department

Decided on April 22, 2026

2022-01996

Lara J. Genovesi, J.P.

Linda Christopher

Lillian Wan

Donna-Marie E. Golia, JJ.

Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove, Anthea H. Bruffee, and Shlomit Heering of counsel), for respondent.

DECISION &
ORDER

Appeal by the defendant from an order of the Supreme Court, Kings County (Michael D. Kitsis, J.), dated February 17, 2022, which, after a hearing, designated him a level two sex offender pursuant to Correction Law article 6-C.

ORDERED that the order is affirmed, without costs or disbursements.

The defendant was convicted, upon his plea of guilty, of possessing a sexual performance by a child.

After a hearing pursuant to the Sex Offender Registration Act (SORA) (Correction Law art 6-C), the Supreme Court assessed the defendant a total of 80 points on the risk assessment instrument, denied the defendant's application for a downward departure from the presumptive risk level, and designated him a level two sex offender.

The defendant appeals.

"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" (*People v Coleman*, 225 AD3d 792, 794 [internal quotation marks omitted], quoting *People v Downes*, 216 AD3d 1183, 1183-1184; *see* Sex Offender Registration Act: Risk Assessment Guidelines and Commentary at 4 [2006] [hereinafter Guidelines]; *People v Gillotti*, 23 NY3d 841, 860). "If the defendant makes that twofold showing, the SORA court must exercise its discretion by weighing the mitigating factor to determine whether the totality of the circumstances warrants a departure to avoid an over-assessment of the defendant's dangerousness and risk of sexual recidivism" (*People v Coleman*, 225 AD3d at 794 [internal quotation marks omitted], quoting *People v Downes*, 216 AD3d at 1184; *see* *People v Gillotti*, 23 NY3d at 861).

Contrary to the defendant's contention, the Supreme Court providently exercised its discretion in denying his application for a downward departure.

Although it has been recognized that the assessment of points under risk factor 3 (number of victims) and risk factor 7 (relationship with victim) may result in an overassessment of the risk posed to the community by certain offenders whose crime was the possession of images of child sexual abuse (*see* *People v Gillotti*, 23 NY3d at 861; *People v Oyola*, 217 AD3d 791, 792), a downward departure is not warranted under the circumstances here (*see* *People v Smith*, 187 AD3d 1228, 1229).

The length of time the defendant had been viewing child pornography, the number and nature of the images and video files he possessed, and the defendant's sharing of that material with others, all militated against a downward departure (*see* *People v Fernandez*, 219 AD3d 760, 763; *People v Smith*, 187 AD3d at 1229; *People v Goldman*, 150 AD3d 905, 907).

Contrary to the defendant's further contention, the fact that the total of 80 points fell on the lower end of the risk level two designation does not warrant a downward departure (*see* *People v Rucano*, 213 AD3d 709, 711).

The defendant's contention that he was entitled to a downward departure based upon certain other alleged mitigating factors, including a lack of a prior criminal history, is unpreserved for appellate review, as he failed to raise these alleged mitigating factors as a ground for a downward departure at the SORA hearing (*see* *People v Infantino*, 215 AD3d 768, 770-771).

In any event, the defendant's lack of prior criminal history was adequately taken into account by the Guidelines (*see* *id.* at 771; *People v Bigelow*, 175 AD3d 1443, 1444). The other alleged mitigating factors identified by the defendant, including his acceptance of responsibility, and the strict supervision he will be under on probation, a condition of which includes participation in a sex offender treatment program, were also adequately taken into account by the Guidelines (*see* *People v Laskaris*, 231 AD3d 1173, 1174; *People v Infantino*, 215 AD3d at 771; *People v Peoples*, 189 AD3d 1282, 1282-1283).

Accordingly, the Supreme Court properly denied the defendant's application for a downward departure and designated the defendant a level two sex offender.

GENOVESI, J.P., CHRISTOPHER, WAN and GOLIA, JJ., concur.

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