

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

People v. Mirabel

2020 NY Slip Op 05691 (N.Y. Ct. App. 2020) · No. 2019-3589 · Decided October 13, 2020

SUMMARY

The New York Appellate Division, First Department unanimously affirmed an order adjudicating Eddi H. Mirabel a level two sex offender under the Sex Offender Registration Act. The court held that Supreme Court properly declined to grant a downward departure, citing the egregiousness of the underlying crime, the victim's injuries, and the absence of a basis for reducing the assessment.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Gische, J.P.; Singh, J.; Kennedy, J.; Mendez, J.
JURISDICTION	New York
DECIDED	October 13, 2020
DOCKET	2019-3589
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order of Supreme Court, New York County, adjudicating him a level two sex offender under the Sex Offender Registration Act.
STANDARD OF REVIEW	Abuse of discretion; the court reviewed whether Supreme Court providently exercised its discretion in declining a downward departure.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Eddi H. Mirabel v. The People of the State of New York

TOPICS

- appellate procedure
- standard of review
- sentencing

PRACTICE AREAS

- criminal law
- sex offender registration

QUESTIONS PRESENTED

1. Whether Supreme Court properly declined to grant defendant a downward departure from the presumptive sex-offender risk level.
2. Whether the record established an overassessment of risk-assessment points warranting a reduction in defendant's sex-offender risk level.

HOLDINGS

1. Supreme Court providently exercised its discretion in declining to grant a downward departure, and the record did not establish any basis for such a departure.

FACTUAL BACKGROUND

Defendant was adjudicated a level two sex offender under the Sex Offender Registration Act. The underlying crime involved a young victim who suffered severe injuries. The Appellate Division relied on the egregiousness of the crime and the severity of the victim's injuries in finding no overassessment of points and no basis for a downward departure.

PROCEDURAL HISTORY

Supreme Court, New York County, entered an order on or about December 12, 2018, adjudicating defendant a level two sex offender pursuant to the Sex Offender Registration Act. The Appellate Division, First Department, unanimously affirmed the order without costs.

DISPOSITION

affirmed

CASES CITED

- People v. Gillotti, 23 N.Y.3d 841 (2014)

OPINION

PER CURIAM.

People v Mirabel (2020 NY Slip Op 05691) People v Mirabel 2020 NY Slip Op 05691 Decided on October 13, 2020 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: October 13, 2020 Before: Gische, J.P., Singh, Kennedy, Mendez, JJ. Ind No. 2746/15 Appeal No. 12042 Case No. 2019-3589 [*1]The People of the State of New York, Respondent, vEddi H. Mirabel, Defendant-Appellant.

Robert S. Dean, Center for Appellate Litigation, New York (Nicole P. Geoglis of counsel), for appellant. Cyrus R. Vance, Jr. District Attorney, New York (Katherine Kulkarni of counsel), for respondent. Order, Supreme Court, New York County (Abraham L. Clott, J.), entered on or about

December 12, 2018, which adjudicated defendant a level two sex offender pursuant to the Sex Offender Registration Act (Correction Law art 6-C), unanimously affirmed, without costs.

The court providently exercised its discretion when it declined to grant a downward departure (see *People v Gillotti*, 23 NY3d 841 [2014]). Given the particular egregiousness of the underlying crime, we do not find that there was any overassessment of points, and the record does not establish any basis for a downward departure. Among other factors, the severity of the young victim's injuries suggests an indifference on the part of defendant to the well-being of others, and a consequent risk of sexual reoffense.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT,
APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: October 13, 2020