

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

People v. Mikalonis

2026 NY Slip Op 03210 · No. CV-25-0723 · Decided May 21, 2026

SUMMARY

The Appellate Division, Third Department, reversed an order classifying Daniel Mikalonis as a risk level two sex offender under the Sex Offender Registration Act. The court held that although the assessment of points for substance abuse was supported, Mikalonis demonstrated an exceptional response to treatment and was therefore entitled to a downward departure and classification as a risk level one sex offender.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Mackey, J.; Garry, P.J.; Clark, J.; Fisher, J.; Ryba, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	May 21, 2026
DOCKET	CV-25-0723
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendant appealed from an order of Ulster County Court classifying him as a risk level two sex offender under the Sex Offender Registration Act and denying his request for a downward departure.
STANDARD OF REVIEW	The People must establish the facts supporting a SORA risk-level classification by clear and convincing evidence. A defendant seeking a downward departure must establish by a preponderance of the evidence that mitigating factors not adequately considered by the risk-assessment guidelines exist.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Daniel Mikalonis v. The People of the State of New York

TOPICS

- appellate procedure
- criminal procedure
- standard of review

PRACTICE AREAS

criminal procedure

sex offender registration

QUESTIONS PRESENTED

1. Whether the assessment of 15 points under SORA risk factor 11 for a history of drug or alcohol abuse was supported by clear and convincing evidence.
2. Whether defendant demonstrated an exceptional response to treatment and other mitigating circumstances warranting a downward departure from the presumptive SORA risk classification.

HOLDINGS

1. The assessment of 15 points for defendant's history of drug or alcohol abuse was supported by clear and convincing evidence because his frequent daily marijuana use continued through the period of the offense and was not merely social or occasional use.
2. A downward departure was warranted because defendant demonstrated, by a preponderance of the evidence, an exceptional response to sex-offender treatment, considered together with the record as a whole and the People's initial stipulation to risk level one.

KEY QUOTATIONS

*“The People ‘bear the burden of proving the facts supporting the determinations sought by clear and convincing evidence’ in establishing a risk level classification under SORA” ([*1])*

*“Defendant's use of drugs prior to and after [his] sex offense was not in the distant past or excessively remote, his daily use of marijuana was akin to habitual rather than merely social or occasional use and his apparent abstinence while in prison is not necessarily predictive of his behavior when no longer under such supervision” ([*2])*

*“A defendant seeking a downward departure must demonstrate, by a preponderance of the evidence, the existence of mitigating factors not adequately taken into consideration by the risk assessment guidelines” ([*2])*

FACTUAL BACKGROUND

Defendant admitted that he engaged in sexual intercourse with the victim beginning when the victim was 13 years old and continuing for several years. His presentence materials showed frequent daily marijuana use encompassing the period of the offense, and he was diagnosed with cannabis use disorder. During sex-offender treatment, he earned 95 of 96 available points in six monthly evaluations and was consistently classified as highly motivated, with his instructor praising his participation and performance.

PROCEDURAL HISTORY

Defendant pleaded guilty to criminal sexual act in the second degree and was sentenced to seven years in prison followed by 10 years of postrelease supervision. Before his release, the Board of Examiners of Sex Offenders presumptively classified him as a risk level two offender based on an 80-point risk assessment. Although the

parties stipulated to a risk level one classification, County Court held an in-person hearing, classified defendant as risk level two, and denied a downward departure. The Appellate Division reversed and classified defendant as risk level one.

DISPOSITION

reversed

CASES CITED

- People v. Mikalonis, 201 AD3d 1039 (3d Dept 2022)
- People v. Roubik, 231 AD3d 1210, 1210 (3d Dept 2024)
- People v. Williamson, 181 AD3d 1100, 1101 (3d Dept 2020)
- People v. Palmer, 20 NY3d 373, 378 (2013)
- People v. McDermott, 230 AD3d 1484, 1485-1486 (3d Dept 2024)
- People v. Salerno, 224 AD3d 1016, 1017 (3d Dept 2024)
- People v. LeBlanc, 207 AD3d 966, 968 (3d Dept 2022)
- People v. Bellinger, 233 AD3d 1331, 1333 (3d Dept 2024)
- People v. Pribble, 244 AD3d 1420, 1421 (3d Dept 2025)
- People v. Adams, 216 AD3d 1376, 1378 (3d Dept 2023), lv denied 40 NY3d 904 (2023)
- People v. Waterbury, 231 AD3d 201, 208-209 (3d Dept 2024)

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