

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

People v. Wilkinson

2025 NY Slip Op 06631 (N.Y. Ct. App. 2025) · No. 2021-08987 · Decided November 26, 2025

SUMMARY

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

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Angela G. Iannacci, J.P.; Lara J. Genovesi; Carl J. Landicino; Laurence L. Love
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	November 26, 2025
DOCKET	2021-08987
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed from an order of the Supreme Court, Queens County, entered after a hearing, that designated him a level three sex offender under the Sex Offender Registration Act and denied his request for a downward departure.
STANDARD OF REVIEW	The People must establish the facts supporting the risk assessment by clear and convincing evidence. A defendant seeking a downward departure must identify an appropriate mitigating factor as a matter of law and prove the facts supporting it by a preponderance of the evidence; if that showing is made, the court weighs the factor under the totality of the circumstances.
PRECEDENTIAL VALUE	Published
PARTIES	Andrew Wilkinson v. The People of the State of New York

TOPICS

criminal procedure appellate procedure standard of review

PRACTICE AREAS

sex offender registration criminal procedure appellate procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court properly assessed points under risk factors 1, 3, and 12 of the Sex Offender Registration Act risk assessment instrument.
2. Whether the defendant established entitlement to a downward departure from the presumptive risk level three designation.

HOLDINGS

1. The Supreme Court properly assessed 10 points under risk factor 1 and 20 points under risk factor 3 because the People proved by clear and convincing evidence that the defendant used forcible compulsion and that there were two victims.
2. The Supreme Court properly assessed 10 points under risk factor 12 based on the defendant's removal from sex offender treatment for poor participation and progress, failure to complete treatment while incarcerated, and lack of genuine acceptance of full responsibility.
3. The defendant was not entitled to a downward departure because he failed to establish an appropriate mitigating factor not adequately accounted for by the Guidelines and failed to prove additional mitigating facts warranting 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]-[*2])

“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” ([*2])

FACTUAL BACKGROUND

The defendant was assessed 145 points under the Sex Offender Registration Act risk assessment instrument. The evidence showed that he used forcible compulsion in committing an underlying offense, that there were two victims, and that he had been removed from sex offender treatment for poor participation and progress, failed to complete treatment while incarcerated, and did not genuinely accept full responsibility. He sought a downward departure based in part on reentry plans and family support.

PROCEDURAL HISTORY

The Supreme Court, Queens County, assessed the defendant 145 points under the Sex Offender Registration Act risk assessment instrument, designated him a presumptive risk level three offender, and denied a downward departure. The Appellate Division affirmed the order without costs or disbursements.

DISPOSITION

affirmed

CASES CITED

- People v. Gorostiza, 210 AD3d 1118, 1119
- People v. Strong, 196 AD3d 707
- People v. Middleton, 50 AD3d 1114, 1115, affd 12 NY3d 737
- People v. Menjivar, 121 AD3d 660, 661
- People v. Duarte, 84 AD3d 908, 909
- People v. Kornegay, 235 AD3d 787, 787-788
- People v. James, 99 AD3d 775, 775-776
- People v. Wyatt, 89 AD3d 112, 128
- People v. Gillotti, 23 NY3d 841, 861
- People v. Alvarado, 173 AD3d 909, 910
- People v. Felton, 175 AD3d 734, 735
- People v. Champagne, 140 AD3d 719, 720
- People v. Taylor, 199 AD3d 845, 846
- People v. Roelofsen, 195 AD3d 962, 963
- People v. Tineo-Morales, 101 AD3d 839, 840
- People v. Dockery, 233 AD3d 808, 810, lv granted 43 NY3d 907
- People v. Collins, 188 AD3d 1107, 1108
- People v. Carter, 138 AD3d 706, 707

OPINION

PER CURIAM.

People v Wilkinson (2025 NY Slip Op 06631) People v Wilkinson 2025 NY Slip Op 06631
Decided on November 26, 2025 Appellate Division, Second 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 on November 26, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department ANGELA G. IANNACCI, J.P.

LARA J. GENOVESI CARL J. LANDICINO LAURENCE L. LOVE, JJ. 2021-08987 [*1]The People of the State of New York, respondent, v Andrew Wilkinson, appellant. Patricia Pazner, New York, NY (Joshua M. Levine of counsel), for appellant. Melinda Katz, District Attorney, Kew Gardens, NY (Johnnette Traill, Christopher Blira-Koessler, and Alexander Vidal of counsel), for respondent.

DECISION & ORDER Appeal by the defendant from an order of the Supreme Court, Queens County (Ushir Pandit-Durant, J.), dated November 15, 2021, which, after a hearing, designated him a level three sex offender pursuant to Correction Law article 6-C. ORDERED that the order is affirmed, without costs or disbursements.

In this proceeding pursuant to the Sex Offender Registration Act (Correction Law art 6-C), the Supreme Court assessed the defendant 145 points on the risk assessment instrument, rendering him a risk level three offender, and denied his request for a downward departure from his presumptive risk level.

The defendant appeals. Contrary to the defendant's contention, the Supreme Court properly assessed 10 points under risk factor 1 and 20 points under risk factor 3. The People proved by clear and convincing evidence that the defendant used forcible compulsion in the commission of an underlying offense and that there were two victims (see Sex Offender Registration Act: Risk Assessment Guidelines and Commentary at 5 [2006] [hereinafter Guidelines]; *People v Gorostiza*, 210 AD3d 1118, 1119; *People v Strong*, 196 AD3d 707; *People v Middleton*, 50 AD3d 1114, 1115, affd 12 NY3d 737; cf. *People v Menjivar*, 121 AD3d 660, 661; *People v Duart*, 84 AD3d 908, 909).

The Supreme Court also properly assessed the defendant 10 points under risk factor 12. The People presented clear and convincing evidence of the defendant's removal from sex offender treatment for poor participation and progress, failure to complete treatment while incarcerated, and lack of genuine acceptance of full responsibility (see Guidelines at 15-16; *People v Kornegay*, 235 AD3d 787, 787-788; *People v James*, 99 AD3d 775, 775-776).

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 Wyatt*, 89 AD3d 112, 128; see *People v Gillotti*, 23 NY3d 841, 861; see also Guidelines at 4).

"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 [*2]an overassessment of the defendant's dangerousness and risk of sexual recidivism" (

People v Alvarado, 173 AD3d 909, 910; see People v Gillotti, 23 NY3d at 861; People v Felton, 175 AD3d 734, 735; People v Champagne, 140 AD3d 719, 720).

Here, the defendant failed to establish his entitlement to a downward departure. The defendant's reentry plans and the support of his family were adequately taken into account by the Guidelines (see People v Taylor, 199 AD3d 845, 846; People v Roelofsen, 195 AD3d 962, 963; People v Felton, 175 AD3d at 735; cf. People v Tineo-Morales, 101 AD3d 839, 840). Further, the defendant failed to demonstrate, by a preponderance of the evidence, the existence of any other mitigating factors that would warrant a departure from his presumptive risk level (see People v Dockery, 233 AD3d 808, 810, lv granted 43 NY3d 907; People v Collins, 188 AD3d 1107, 1108; cf. People v Carter, 138 AD3d 706, 707).

Accordingly, the Supreme Court properly designated the defendant a level three sex offender. IANNACCI, J.P., GENOVESI, LANDICINO and LOVE, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court