

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

People v. Macedonio

2026 NY Slip Op 00162 (Supreme Court of the State of New York Appellate Division Second Judicial
Department 2026) · No. 2023-05999; 2023-06002 · Decided January 14, 2026

SUMMARY

The Appellate Division, Second Department affirmed two orders designating Carl A. Macedonio a level three sex offender under the Sex Offender Registration Act. The court held that several asserted mitigating factors were already accounted for or insufficiently proven, and that although his advanced age and debilitating illnesses constituted a mitigating factor, the totality of the circumstances, including the extreme violence of his crimes, supported the level three designation.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Angela G. Iannacci, J.; Deborah A. Dowling, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	January 14, 2026
DOCKET	2023-05999; 2023-06002
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from two County Court orders designating him a level three sex offender under Correction Law article 6-C after a risk-level hearing and denying his requests for downward departures from the presumptive designation.
STANDARD OF REVIEW	The court reviews whether the defendant established an appropriate mitigating factor and the supporting facts by a preponderance of the evidence, and whether, in the court's discretion, the totality of the circumstances warrants departure from the presumptive risk level.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Carl A. Macedonio v. The People of the State of New York

TOPICS

criminal procedure appellate procedure standard of review

PRACTICE AREAS

criminal procedure sex offender registration risk-level designation appellate review

QUESTIONS PRESENTED

1. Whether the defendant established mitigating factors not otherwise accounted for by the SORA Guidelines that warranted a downward departure from his presumptive level three risk designation.
2. Whether the defendant's acceptance of responsibility, remorse, prison disciplinary record, alternate risk-assessment score, rehabilitation, advanced age, and debilitating illnesses justified a downward departure.
3. Whether the totality of the circumstances, including the extreme violence of the offenses, supported retaining the level three designation despite the defendant's physical condition.

HOLDINGS

1. A defendant seeking a downward departure must first identify an appropriate mitigating factor that tends to establish a lower likelihood of reoffense or danger to the community and is not otherwise accounted for by the Guidelines, and must prove the facts supporting that factor by a preponderance of the evidence. If that showing is made, the court must exercise discretion by weighing the factor against the totality of the circumstances.
2. Acceptance of responsibility and remorse, as well as the defendant's prison disciplinary record, do not properly serve as mitigating factors when those matters are already accounted for by SORA risk factors 12 and 13.
3. A defendant's score on an alternate risk-assessment instrument, standing alone, does not constitute a mitigating factor justifying a downward departure from the presumptive risk level.
4. Although rehabilitation based on the totality of the record may constitute a mitigating factor not accounted for by the Guidelines, the defendant failed to prove the facts supporting rehabilitation by a preponderance of the evidence.
5. The defendant's advanced age and debilitating illnesses constituted a mitigating factor, but the totality of the circumstances, including the extreme violence of his crimes and the murder of one victim, did not warrant a downward departure; the level three designation best assessed his risk and the threat to the public.

KEY QUOTATIONS

*“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 *1)*

*“Accordingly, we affirm the orders designating the defendant a level three sex offender.” (at *2)*

FACTUAL BACKGROUND

The defendant had convictions for rape in the first degree under two 1971 indictments and a conviction for murder in the second degree under one of those indictments. At the SORA risk-level hearings, he presented evidence concerning responsibility and remorse, prison disciplinary history, an alternate risk-assessment instrument, rehabilitation, advanced age, and debilitating physical illnesses. The court found that some asserted factors were already accounted for by the Guidelines, that rehabilitation was not proven, and that although his physical condition was a mitigating factor, the extreme violence of his crimes, including the murder of a victim, supported a level three designation.

PROCEDURAL HISTORY

The defendant was convicted under two indictments of rape in the first degree and, under one indictment, murder in the second degree. At separate Sex Offender Registration Act risk-level hearings, he sought downward departures based on acceptance of responsibility, remorse, prison disciplinary history, an alternate risk-assessment instrument, rehabilitation, advanced age, and debilitating illnesses. The County Court, Suffolk County, denied the departure applications and designated him a level three sex offender in two orders dated February 8, 2023. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- 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, 625
- People v. Watts, 225 A.D.3d 638, 639
- People v. Bell, People v. Bell, 237 A.D.3d 863, 864-865
- People v. Rolon, 210 A.D.3d 708, 709
- People v. Madison, 98 A.D.3d 573, 574
- People v. Abdullah, 210 A.D.3d 704, 706
- People v. Haims, 203 A.D.3d 1184, 1186
- People v. Davis, 179 A.D.3d 183, 189
- People v. Douglas, 189 A.D.3d 1276, 1278

OPINION

PER CURIAM.

People v Macedonio (2026 NY Slip Op 00162) People v Macedonio 2026 NY Slip Op 00162
Decided on January 14, 2026 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 January 14, 2026
SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial
Department MARK C. DILLON, J.P.

ANGELA G. IANNACCI DEBORAH A. DOWLING JAMES P. MCCORMACK, JJ. 2023-05999
2023-06002 [*1]The People of the State of New York, respondent, v Carl A. Macedonio,
appellant. Stacy E. Albin-Leone, Long Beach, NY, for appellant. Raymond A. Tierney, District
Attorney, Riverhead, NY (Shiry Gaash and Thomas Costello of counsel), for respondent.
DECISION & ORDER Appeals by the defendant from two orders of the County Court, Suffolk
County (Karen M. Wilutis, J.), both dated February 8, 2023, which, after a hearing, designated him
a level three sex offender pursuant to Correction Law article 6-C.

ORDERED that the orders are affirmed, without costs or disbursements. The defendant was
convicted under Indictment No. 402/71, inter alia, of rape in the first degree, and under Indictment
No. 1237/71, among other things, of rape in the first degree and murder in the second degree. At a
hearing to designate the defendant's risk level pursuant to the Sex Offender Registration Act
(Correction Law art 6-C) with respect to each judgment of conviction, the defendant sought a
downward departure from his presumptive risk designation.

The County Court denied the downward departure application and in two orders, both dated
February 8, 2023, designated the defendant a level three sex offender. The defendant appeals. "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" (People v Curry, 158 AD3d 52, 58;
see Sex Offender Registration Act: Risk Assessment Guidelines and Commentary at 4 [2006]
[hereinafter Guidelines]; People v Gillotti, 23 NY3d 841, 861).

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 (see
People v Gillotti, 23 NY3d at 861; People v Bigelow, 175 AD3d 1443).

Here, the defendant's acceptance of responsibility and demonstration of remorse, as well as his
disciplinary record in prison, are already taken into account by risk factors 12 and 13, respectively,
and, thus, do not properly serve as mitigating factors (see People v Musarra, 240 AD3d 624, 625;
People v Watts, 225 AD3d 638, 639). Similarly, the defendant's score on an alternate risk

assessment instrument does not, by itself, constitute a mitigating factor justifying a downward departure from the presumptive risk level (see *People v Bell*, 237 AD3d 863, 864-865; *People v [*2]Rolon*, 210 AD3d 708, 709).

While "[r]ehabilitation on the basis of the totality of the record is a mitigating factor that is not taken into account by the Guidelines" (*People v Madison*, 98 AD3d 573, 574), the defendant did not prove by a preponderance of the evidence the facts in support of this alleged mitigating factor (see *People v Abdullah*, 210 AD3d 704, 706; *People v Haims*, 203 AD3d 1184, 1186).

Finally, although the defendant submitted sufficient proof that his physical condition, due to his advanced age and debilitating illnesses, constituted a mitigating factor (see Guidelines at 5; *People v Davis*, 179 AD3d 183, 189), under the totality of the circumstances, including the extreme violence of the defendant's crimes, which involved the murder of one of his victims, the level three designation best assesses the risk of reoffense by the defendant and the threat posed to the public should he reoffend (see *People v Abdullah*, 210 AD3d at 706; *People v Douglas*, 189 AD3d 1276, 1278).

Accordingly, we affirm the orders designating the defendant a level three sex offender. DILLON, J.P., IANNACCI, DOWLING and MCCORMACK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court