

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

People v. Johnson

2026 NY Slip Op 00844 (1st Dep't 2026) · No. Ind. No. 4710/88; Appeal No. 5833; Case No. 2023-05813 · Decided February 17, 2026

SUMMARY

The Appellate Division, First Department, unanimously affirmed an order denying in part Derek Johnson’s petition under Correction Law § 168-o(2) to modify his sex offender classification. The court upheld modification from risk level three to level two, concluding that the mitigating factors did not justify a further reduction to level one in light of the aggravating factors.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; Kapnick, J.; Pitt-Burke, J.; Higgitt, J.; Rosado, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	February 17, 2026
DOCKET	Ind. No. 4710/88; Appeal No. 5833; Case No. 2023-05813
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of Supreme Court, Bronx County, denying in part a petition under Correction Law § 168-o(2) to modify defendant's sex offender risk classification.
STANDARD OF REVIEW	The Appellate Division exercised independent discretion in determining whether the record supported a further reduction of defendant's sex offender risk level.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Derek Johnson, Defendant-Appellant v. The People of the State of New York, Respondent

TOPICS

- post-conviction relief
- appellate procedure
- criminal procedure
- standard of review

PRACTICE AREAS

criminal procedure

post-conviction relief

appellate procedure

QUESTIONS PRESENTED

1. Whether defendant's mitigating circumstances warranted exercising the court's independent discretion to reduce his sex offender risk classification from level two to level one.

HOLDINGS

1. The Appellate Division declined to further reduce defendant's risk classification to level one because the mitigating factors, viewed together with the aggravating factors, supported only a level-two classification.

KEY QUOTATIONS

*“The mitigating factors cited by defendant, including his age, lack of sexual offense convictions since 1988 and criminal convictions since 2009, and community support, when viewed in light of the aggravating factors, including the seriousness of defendant's underlying crime of rape at knifepoint, persistent denial that he needs sex offense treatment, conditional remorse, and lack of evidence documenting his sobriety, warrant only a modification to a risk level two adjudication” ([*1])*

FACTUAL BACKGROUND

Johnson had been classified as a level-three sex offender and sought a reduction to level one under Correction Law § 168-o(2). Supreme Court reduced his classification to level two but denied the requested reduction to level one. In evaluating the request, the court considered mitigating factors including Johnson's age, the absence of sexual-offense convictions since 1988 and criminal convictions since 2009, and community support, against aggravating factors including the seriousness of his rape conviction, persistent denial that he needed sex-offense treatment, conditional remorse, and the absence of documented sobriety.

PROCEDURAL HISTORY

Defendant petitioned Supreme Court, Bronx County, for modification of his level-three sex offender classification. The court reduced the classification to level two but denied defendant's request for a further reduction to level one. The Appellate Division unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Johnson, 124 A.D.3d 495, 496 (1st Dep't 2015)
- People v. Davis, 179 A.D.3d 183, 187 (2d Dep't 2019)

OPINION

People v. Johnson 2026 NY Slip Op 00844

PER CURIAM.

People v Johnson (2026 NY Slip Op 00844) People v Johnson 2026 NY Slip Op 00844 Decided on February 17, 2026 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: February 17, 2026 Before: Manzanet-Daniels, J.P., Kapnick, Pitt-Burke, Higgitt, Rosado, JJ. Ind. No. 4710/88|Appeal No. 5833|Case No. 2023-05813| [*1]The People of the State of New York, Respondent, v Derek Johnson, Defendant-Appellant. Jenay Nurse Guilford, Center for Appellate Litigation, New York (Adrienne Wells of counsel), for appellant. Darcel D. Clark, District Attorney, Bronx (Rafael Curbelo of counsel), for respondent. Order, Supreme Court, Bronx County (Raymond L. Bruce, J.), entered on or about October 5, 2023, which denied in part defendant's Correction Law § 168-o(2) petition to modify his sex offender classification, unanimously affirmed, without costs. Pursuant to defendant's Correction Law § 168-o(2) petition, the court modified defendant's risk level three classification to level two but denied a further modification to level one. Defendant has presented no basis for this Court to exercise its independent discretion to further reduce defendant's risk level to level one. The mitigating factors cited by defendant, including his age, lack of sexual offense convictions since 1988 and criminal convictions since 2009, and community support, when viewed in light of the aggravating factors, including the seriousness of defendant's underlying crime of rape at knifepoint, persistent denial that he needs sex offense treatment, conditional remorse, and lack of evidence documenting his sobriety, warrant only a modification to a risk level two adjudication (see People v Johnson , 124 AD3d 495, 496 [1st Dept 2015]; cf. People v Davis , 179 AD3d 183 , 187 [2d Dept 2019]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: February 17, 2026