

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)

