

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

People v. Johnson

2022 NY Slip Op 03291 (N.Y. Ct. App. 2022) · No. 531091 · Decided May 19, 2022

SUMMARY

The New York Appellate Division, Third Department, affirmed an order classifying Matthew Johnson as a risk level three sex offender under the Sex Offender Registration Act. The court held that the County Court properly granted an upward departure from the presumptive risk level two classification based on the exceptionally violent and prolonged nature of the attack, the victim's injuries, and circumstances not adequately accounted for by the risk assessment guidelines.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Lynch, J.; Egan Jr., J.P.; Aarons, J.; Reynolds Fitzgerald, J.; Ceresia, J.
JURISDICTION	New York
DECIDED	May 19, 2022
DOCKET	531091
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order of the County Court of Tompkins County classifying him as a risk level three sex offender under the Sex Offender Registration Act.
STANDARD OF REVIEW	The Appellate Division reviewed County Court's discretionary determination to depart upward from the presumptive SORA risk level for abuse of discretion, while requiring that the aggravating factor be established by clear and convincing evidence and not be adequately accounted for by the guidelines.
PRECEDENTIAL VALUE	Published opinion; precedential value under New York appellate practice not otherwise specified in the opinion.
PARTIES	Matthew Johnson 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 practice

QUESTIONS PRESENTED

1. Whether County Court improperly departed upward from defendant's presumptive SORA risk level two classification to risk level three based on evidence allegedly already accounted for by the SORA guidelines.

HOLDINGS

1. County Court properly departed upward from the presumptive risk level two classification to risk level three because the exceptionally violent and depraved circumstances of defendant's conduct, including the prolonged nature and longevity of the victim's injuries, constituted aggravating factors not adequately taken into account by the SORA guidelines.

KEY QUOTATIONS

"An upward departure from the presumptive risk level is justified when an aggravating factor, not adequately taken into account by the risk assessment guidelines, is established by clear and convincing evidence" ([*1])

"An aggravating factor, in turn, is one which tends to establish a higher likelihood of reoffense or danger to the community than the presumptive risk level calculated on the risk assessment instrument" ([*2])

"the exceptionally violent and depraved circumstances of defendant's crime" ([*2])

FACTUAL BACKGROUND

In 2010, defendant subjected his pregnant girlfriend to a prolonged and violent attack lasting approximately six hours. He beat her with his fists and various objects, bit her nose, doused her in bleach, threatened her with a loaded firearm, and forced her to engage in sexual conduct and intercourse. The victim sustained significant injuries, including an inability to use her hands for up to eight weeks; defendant pleaded guilty to first-degree assault and attempted first-degree criminal sexual act and received an aggregate sentence of nine years' imprisonment and 15 years of postrelease supervision.

PROCEDURAL HISTORY

After defendant's convictions and prison sentence, the Board of Examiners of Sex Offenders prepared a SORA risk assessment instrument that presumptively placed him at risk level two but recommended an upward departure to level three. County Court assessed 85 points, placing defendant at presumptive risk level two, but ordered an upward departure to risk level three with a sexually violent offender designation. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Waters, 198 A.D.3d 1024, 1025 (3d Dep't 2021), lv. denied, 37 N.Y.3d 919 (2022)
- People v. Courtney, 202 A.D.3d 1246, 1249 (3d Dep't 2022)
- People v. Perry, 174 A.D.3d 1234, 1235, 1235-1236 (3d Dep't 2019), lv. denied, 34 N.Y.3d 905 (2019)
- People v. Remonda, 158 A.D.3d 904, 904-905 (3d Dep't 2018), lv. denied, 31 N.Y.3d 910 (2018)
- People v. Joslyn, 27 A.D.3d 1033, 1034 (3d Dep't 2006)
- People v. Auleta, 135 A.D.3d 1251, 1252-1253 (3d Dep't 2016), lv. denied, 27 N.Y.3d 903 (2016)
- People v. Suber, 91 A.D.3d 619, 620 (2d Dep't 2012), lv. denied, 19 N.Y.3d 801 (2012)
- 179 A.D.3d 1159, 1160 (2020)

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