

NEW YORK COURT OF APPEALS

People v. Townsend

2026 NY Slip Op 03377 · No. No. 48 · Decided May 28, 2026

SUMMARY

The New York Court of Appeals affirmed an order assigning Kenneth Townsend a level two risk classification under the Sex Offender Registration Act. The Court held that the timing, nature, and extent of Townsend's prior sexual and violent offenses constituted an atypical aggravating factor not adequately accounted for by the Guidelines' risk factors 9 and 10, supporting an upward departure from the presumptive level one classification.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Chief Judge Wilson; Judge Rivera; Judge Garcia; Judge Singas; Judge Cannataro; Judge Troutman; Judge Halligan
JURISDICTION	New York Court of Appeals
DECIDED	May 28, 2026
DOCKET	No. 48
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the Appellate Division, First Department, affirming Supreme Court's upward departure under the Sex Offender Registration Act from a presumptive risk level one classification to risk level two.
STANDARD OF REVIEW	The Court of Appeals reviews a SORA risk-level determination, expressly made under the proper evidentiary standard and affirmed by the Appellate Division, for record support or an error of law.
PRECEDENTIAL VALUE	Published New York Court of Appeals memorandum; precedential
PARTIES	Kenneth Townsend v. The People

TOPICS

- criminal procedure
- appellate procedure
- standard of review
- sentencing

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a SORA court may grant an upward departure based on an offender's atypical prior criminal history when the Guidelines account for prior crimes generally but do not adequately account for the number, timing, nature, and extent of that history.
2. Whether the record supported the lower courts' upward departure from presumptive risk level one to risk level two.

HOLDINGS

1. An offender's prior criminal history may warrant an upward SORA departure when, although prior criminal history is a factor contemplated by Guidelines risk factors 9 and 10, the offender's atypical history is aggravating to a degree not adequately accounted for by the Guidelines.
2. The record supported the determination that risk factors 9 and 10 inadequately accounted for Townsend's prior criminal history, and the upward departure to risk level two was therefore proper.

KEY QUOTATIONS

*"Accordingly, "even where the law and the evidence warrant a particular risk level classification based on the defendant's [G]uidelines factor score," a court has discretion to depart from that classification if "there exists an aggravating or mitigating factor of a kind, or to a degree, that is otherwise not adequately taken into account by the [G]uidelines"" ([*2])*

*"Although such history is plainly a factor "of a kind" contemplated by the Guidelines under risk factors 9 and 10, an offender's atypical prior criminal history may be an aggravating factor "to a degree" for which the Guidelines inadequately account" ([*2])*

FACTUAL BACKGROUND

In 2020, after two prior forcible-touching convictions and eight months after completing a prison sentence for an unrelated felony, Townsend committed persistent sexual abuse by squeezing an adult stranger's buttocks over her clothing without consent. The Board of Examiners of Sex Offenders assessed 65 points, producing a presumptive risk level one classification, but recommended an upward departure based on Townsend's extensive and repeated sexual and violent criminal history. His prior record included two forcible-touching convictions, a violent attempted-robbery conviction, attempted assault, parole violations, and a prior SORA level two adjudication involving sexual contact with a 15-year-old victim.

PROCEDURAL HISTORY

Supreme Court adopted the Board of Examiners of Sex Offenders' 65-point risk assessment and, at the People's request, granted an upward departure to risk level two. The Appellate Division unanimously affirmed at 233 AD3d 548 (1st Dept 2024). The New York Court of Appeals granted defendant leave to appeal and affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Gillotti, 23 NY3d 841 (2014)
- People v. Sherlock, 44 NY3d 224, 230 (2025)
- People v. Shader, 43 NY3d 129, 134 (2024)
- People v. Lashway, 25 NY3d 478, 483 (2015)

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