

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

People v. LeBlanc

2022 NY Slip Op 04681 (N.Y. Ct. App. 2022) · No. 533638 · Decided July 21, 2022

SUMMARY

The Appellate Division, Third Department affirmed County Court's classification of Russell R. LeBlanc as a risk level three sex offender under New York's Sex Offender Registration Act. The court held that clear and convincing evidence supported assessing points for failure to accept responsibility and drug or alcohol abuse, resulting in a total score of 110 points.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Fisher, J.; Egan Jr., J.P.; Lynch, J.; Pritzker, J.; Ceresia, J.
JURISDICTION	New York
DECIDED	July 21, 2022
DOCKET	533638
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a County Court order classifying him as a risk level three sex offender under the Sex Offender Registration Act.
STANDARD OF REVIEW	The People must establish the facts supporting a SORA risk-level classification by clear and convincing evidence; the appellate court reviews whether the record supports the County Court's assessment.
PRECEDENTIAL VALUE	precedential
PARTIES	Russell R. LeBlanc v. The People of the State of New York

TOPICS

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

PRACTICE AREAS

- criminal procedure
- sex offender registration

QUESTIONS PRESENTED

1. Whether County Court properly assessed 10 points under SORA risk factor 12 for failure to accept responsibility.
2. Whether County Court properly assessed 15 points under SORA risk factor 11 for drug or alcohol abuse.
3. Whether the resulting 110-point assessment supported classification as a risk level three sex offender.

HOLDINGS

1. County Court properly assessed 10 points because LeBlanc's preplea exculpatory statements, later equivocation, and failure to directly accept responsibility constituted clear and convincing evidence that he had not genuinely accepted responsibility for his conduct.
2. County Court properly assessed 15 points because reliable hearsay in the victim's statement and case summary established by clear and convincing evidence that LeBlanc was abusing drugs and alcohol at the time of the offense.
3. The 110-point assessment supported County Court's classification of LeBlanc as a risk level three sex offender.

KEY QUOTATIONS

*"The People "bear the burden of proving the facts supporting the determinations sought by clear and convincing evidence" in establishing risk level classification under SORA." (*1)*

*"In assessing points under this risk factor, "the Board or [the] court should examine the offender's most recent credible statements and should seek evidence of genuine acceptance of responsibility"" (*1)*

*"Thus, we find that the record amply supports County Court's conclusion that defendant failed to genuinely accept responsibility for his actions and its assessment of 10 points under this risk factor" (*2)*

FACTUAL BACKGROUND

LeBlanc pleaded guilty to rape in the third degree and, before his SORA release hearing, received a presumptive risk level three classification based on a 120-point risk assessment. County Court declined to assess points for relationship to the victim but assessed points for failure to accept responsibility and drug or alcohol abuse, resulting in a total of 110 points. The record included LeBlanc's preplea denials, his guilty plea and completion of sex-offender treatment, his later equivocal statements, and evidence that he abused drugs and alcohol at the time of the offense.

PROCEDURAL HISTORY

Defendant pleaded guilty in 2017 to rape in the third degree and was sentenced to four years in prison followed by five years of postrelease supervision. Before his release, the Board of Examiners of Sex Offenders prepared a risk assessment instrument that presumptively classified him as risk level three. After a hearing, Delaware County Court assessed 110 points and classified him as a risk level three sex offender; the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Harvey, 202 A.D.3d 1296, 1296-1297 (2022)
- People v. Colsrud, 155 A.D.3d 1601, 1601 (2017)
- People v. Current, 147 A.D.3d 1235, 1238 (2017)
- People v. Richardson, 197 A.D.3d 878, 880 (2021), lv denied, 37 N.Y.3d 918 (2022)
- People v. DePerno, 165 A.D.3d 1351, 1352-1353 (2018), lv denied, 32 N.Y.3d 915 (2019)
- People v. Vasquez, 149 A.D.3d 1584, 1585 (2017), lv denied, 29 N.Y.3d 916 (2017)
- People v. Askins, 148 A.D.3d 1598, 1598-1599 (2017), lv denied, 29 N.Y.3d 912 (2017)
- People v. Solomon, 202 A.D.3d 88 (2021), lv denied, 38 N.Y.3d 906 (2022)
- People v. Courtney, 202 A.D.3d 1246, 1248 (2022)
- People v. Smith, 199 A.D.3d 1188, 1190 (2021)
- People v. Truelove, 191 A.D.3d 1076, 1077 (2021)
- People v. Wassilie, 201 A.D.3d 1117, 1119 (2022), lv dismissed, 37 N.Y.3d 1172 (2022), lv denied, 38 N.Y.3d 907 (2022)
- People v. Odell, 197 A.D.3d 1364, 1365 (2021), lv denied, 37 N.Y.3d 918 (2022)