

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,  
SECOND JUDICIAL DEPARTMENT

People of State of New York v. Elton Williams

People v. Williams, 2022 NY Slip Op 05877 (N.Y. Ct. App. 2022) · No. 2021-03836 · Decided October 19, 2022

SUMMARY

The Appellate Division, Second Department, affirmed an order designating Elton Williams a level two sex offender under the Sex Offender Registration Act. The court upheld the assessment of 20 points for a continuing course of sexual misconduct and concluded that Williams had not established age or health conditions warranting a downward departure.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                             |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                                                                                                                                      |
| WRITING FOR THE COURT | Valerie Brathwaite Nelson, J.P.; Reinaldo E. Rivera, J.; Joseph J. Maltese, J.; Lara J. Genovesi, J.                                                                                                                                                        |
| JURISDICTION          | New York                                                                                                                                                                                                                                                    |
| DECIDED               | October 19, 2022                                                                                                                                                                                                                                            |
| DOCKET                | 2021-03836                                                                                                                                                                                                                                                  |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                    |
| PROCEDURAL POSTURE    | Defendant appealed from an order of the Supreme Court, Suffolk County, entered after a risk-assessment hearing under the Sex Offender Registration Act, that designated him a level two sex offender and denied his request for a downward departure.       |
| STANDARD OF REVIEW    | The Appellate Division reviewed whether the People established the risk-factor assessment by clear and convincing evidence and whether the Supreme Court properly exercised its discretion in denying a downward departure from the presumptive risk level. |
| PRECEDENTIAL VALUE    | published                                                                                                                                                                                                                                                   |
| PARTIES               | Elton Williams v. People of State of New York                                                                                                                                                                                                               |

TOPICS

- criminal procedure
- appellate procedure

## PRACTICE AREAS

sex offender registration

criminal procedure

appellate practice

## QUESTIONS PRESENTED

1. Whether the Supreme Court properly assessed 20 points under risk factor 4 for a continuing course of sexual misconduct.
2. Whether the defendant established a basis for a downward departure from the presumptive risk level based on age or health conditions.

## HOLDINGS

1. The Supreme Court properly assessed the defendant 20 points under risk factor 4 because the People established by clear and convincing evidence that he engaged in two or more acts of sexual contact, at least one involving sexual intercourse, separated by at least 24 hours.
2. The Supreme Court properly denied the defendant's request for a downward departure because he failed to identify and prove an applicable mitigating factor by a preponderance of the evidence.

## KEY QUOTATIONS

*"A defendant seeking a downward departure from the presumptive risk level has the initial burden of "(1) identifying, as a matter of law, an appropriate mitigating factor, namely, a factor which tends to establish a lower likelihood of reoffense or danger to the community and is of a kind, or to a degree, that is otherwise not adequately taken into account by the Guidelines; and (2) establishing the facts in support of its existence by a preponderance of the evidence"" ([\*1])*

## FACTUAL BACKGROUND

The defendant was assessed 105 points under the Sex Offender Registration Act risk-assessment instrument. The People presented clear and convincing evidence that he engaged in at least two acts of sexual contact, including at least one act of sexual intercourse, with the acts separated by at least 24 hours. The defendant sought a downward departure based on his age and health conditions, but failed to establish that he suffered from advanced age or a debilitating illness.

## PROCEDURAL HISTORY

The Supreme Court, Suffolk County, assessed the defendant 105 points on the risk assessment instrument, denied a downward departure from the presumptive risk level, and designated him a level two sex offender. The Appellate Division affirmed the order without costs or disbursements.

## DISPOSITION

affirmed

## CASES CITED

- People v. Gomez, 204 AD3d 843, 845
- People v. Brown, 194 AD3d 861, 862
- People v. Lopez, 192 AD3d 1050, 1051
- People v. Eason, 192 AD2d 925, 926
- People v. Wyatt, 89 AD3d 112, 128
- People v. Gillotti, 23 NY3d 841, 861
- People v. Champagne, 140 AD3d 719, 720
- People v. Paul, 168 AD3d 1004, 1005
- People v. Benoit, 145 AD3d 687, 688
- People v. Torres, 124 AD3d 744, 746

## OPINION

### PER CURIAM.

People v Williams (2022 NY Slip Op 05877) People v Williams 2022 NY Slip Op 05877 Decided on October 19, 2022 Appellate Division, Second 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 on October 19, 2022 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department VALERIE BRATHWAITE NELSON, J.P.

REINALDO E. RIVERA JOSEPH J. MALTESE LARA J. GENOVESI, JJ. 2021-03836 [\*1]People of State of New York, respondent, vElton Williams, appellant. Laurette D. Mulry, Riverhead, NY (Lisa A. Marcoccia of counsel), for appellant. Raymond A. Tierney, District Attorney, Riverhead, NY (Pilar M. O'Rourke and Lauren Tan of counsel), for respondent. DECISION & ORDER Appeal by the defendant from an order of the Supreme Court, Suffolk County (Chris Ann Kelley, J.), dated May 19, 2021, which, after a hearing, designated him a level two sex offender pursuant to Correction Law article 6-C.

ORDERED that the order is affirmed, without costs or disbursements. In this proceeding pursuant to the Sex Offender Registration Act (Correction Law art 6-C), the Supreme Court assessed the defendant 105 points on the risk assessment instrument, denied his request for a downward departure from the presumptive risk level, and designated him a level two sex offender.

The defendant appeals. Contrary to the defendant's contention, the Supreme Court properly assessed him 20 points under risk factor 4 for a continuing course of sexual misconduct. The People presented clear and convincing evidence that the defendant engaged in two or more acts of sexual contact, at least one of which was an act of sexual intercourse, and the acts were separated in time by at least 24 hours (see Sex Offender Registration Act: Risk Assessment Guidelines and Commentary at 10 [2006] [hereinafter Guidelines]).

Thus, the People met their burden of proof for the assessment of points under risk factor 4 (see *People v Gomez*, 204 AD3d 843, 845; *People v Brown*, 194 AD3d 861, 862; *People v Lopez*, 192 AD3d 1050, 1051; *People v Eason*, 192 AD2d 925, 926). A defendant seeking a downward departure from the presumptive risk level has the initial burden of "(1) identifying, as a matter of law, an appropriate mitigating factor, namely, a factor which tends to establish a lower likelihood of reoffense or danger to the community and is of a kind, or to a degree, that is otherwise not adequately taken into account by the Guidelines; and (2) establishing the facts in support of its existence by a preponderance of the evidence" (see *People v Wyatt*, 89 AD3d 112, 128; see *People v Gillotti*, 23 NY3d 841, 861; see also Guidelines at 4).

If the defendant makes that twofold showing, the court must exercise its discretion by weighing the mitigating factors to determine whether the totality of the circumstances warrants a departure to avoid an overassessment of the defendant's dangerousness and risk of sexual recidivism (see *People v Gillotti*, 23 NY3d at 861; *People v Champagne*, 140 AD3d 719, 720).

The defendant contends that his age and health conditions constituted mitigating factors warranting a downward departure from the presumptive risk level. Although advanced age and debilitating illness may constitute a basis for a downward departure (see Guidelines at 5), the defendant failed to establish that he suffered from either (see *People v Paul*, 168 AD3d 1004, 1005; *People v Benoit*, 145 AD3d 687, 688; *People v Torres*, 124 AD3d 744, 746).

Accordingly, the Supreme Court properly denied the defendant's request for a downward departure and designated him a level two sex offender. BRATHWAITE NELSON, J.P., RIVERA, MALTESE and GENOVESI, JJ., concur. ENTER: Maria T. Fasulo Clerk of the Court