

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

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