

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

People v. Smith

2026 NY Slip Op 00207 (N.Y. Ct. App. 2026) · No. 2022-04871 · Decided January 15, 2026

SUMMARY

The Appellate Division, First Department unanimously affirmed an order adjudicating Jay Smith a level three sexually violent predicate sex offender under the Sex Offender Registration Act. The court held that the lower court properly denied a downward departure, citing Smith's repeated convictions and concluding that housing restrictions associated with the risk-level adjudication were not a mitigating factor bearing on recidivism risk or public safety.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Kennedy, J.P.; Gesmer, J.; Rodriguez, J.; Pitt-Burke, J.; Chan, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	January 15, 2026
DOCKET	2022-04871
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order of Supreme Court, Bronx County, adjudicating him a level three sexually violent predicate sex offender under the Sex Offender Registration Act.
STANDARD OF REVIEW	Abuse of discretion; whether Supreme Court providently exercised its discretion in denying a downward departure.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Jay Smith v. The People of the State of New York

TOPICS

- criminal procedure
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Supreme Court providently exercised its discretion in denying defendant's request for a downward departure from a level three sexually violent predicate sex offender adjudication.
2. Whether restrictions on defendant's housing resulting from his risk level constituted a mitigating factor supporting a downward departure.

HOLDINGS

1. The court providently exercised its discretion in denying defendant's request for a downward departure because his repeated convictions and failure to be deterred by a prior level two adjudication demonstrated an extremely high risk of recidivism.
2. Restrictions on defendant's housing based on his level three adjudication did not constitute a mitigating factor because they had no bearing on his risk of reoffense or the threat he posed to public safety.

KEY QUOTATIONS

“has no bearing on his risk of reoffense or the threat he poses to public safety” ([*1])

FACTUAL BACKGROUND

Defendant had repeated convictions for forcible touching and persistent sexual abuse. He had previously been adjudicated a level two sex offender, but that adjudication did not deter the instant offenses. Defendant sought a downward departure from the level three classification, citing the housing restrictions resulting from his risk level.

PROCEDURAL HISTORY

Supreme Court, Bronx County, entered an order on or about October 3, 2022, adjudicating defendant a level three sexually violent predicate sex offender under Correction Law article 6-C. The Appellate Division, First Department, unanimously affirmed the order without costs.

DISPOSITION

affirmed

CASES CITED

- People v. Gillotti, 23 N.Y.3d 841, 861 (2014)
- People v. Bevel, 224 A.D.3d 430, 431 (1st Dep't 2024), lv. denied, 42 N.Y.3d 902 (2024)