

**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

OPINION

PER CURIAM.

People v Smith (2026 NY Slip Op 00207) People v Smith 2026 NY Slip Op 00207 Decided on January 15, 2026 Appellate Division, First 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 and Entered: January 15, 2026 Before: Kennedy, J.P., Gesmer, Rodriguez, Pitt-Burke, Chan, JJ. Ind No. 30/17|30/17|Appeal No. 5606|Case No. 2022-04871| [*1]The People of the State of New York, Respondent, v Jay Smith, Defendant-Appellant.

Twyla Carter, The Legal Aid Society, New York (Nancy E. Little of counsel), for appellant. Darcel D. Clark, District Attorney, Bronx (Oliver Lee of counsel), for respondent. Order, Supreme Court, Bronx County (Ralph A. Fabrizio, J.), entered on or about October 3, 2022, which adjudicated defendant a level three sexually violent predicate sex offender pursuant to the Sex Offender Registration Act (Correction Law art 6-C), unanimously affirmed, without costs.

The court providently exercised its discretion when it denied defendant's request for a downward departure (see People v Gillotti, 23 NY3d 841, 861 [2014]). Defendant has demonstrated an extremely high risk of recidivism, evidenced by his repeated convictions for forcible touching (Penal Law § 130.52) and persistent sexual abuse (Penal Law § 130.53). These prior convictions resulted in defendant being adjudicated as a level two sex offender, which did not deter the instant offenses for forcible touching and persistent sexual abuse.

Separately, the restrictions on his housing based on his risk level three adjudication do not constitute a mitigating factor where it "has no bearing on his risk of reoffense or the threat he poses to public safety" (People v Bevel, 224 AD3d 430, 431 [1st Dept 2024], lv denied 42 NY3d 902 [2024]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: January 15, 2026